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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 440

THE OHIO OIL COMPANY, APPELLANT,

vs.

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

FILED OCTOBER 14, 1929

(34,571)

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[fol. 2]

IN UNITED STATES DISTRICT COURT, EASTERN LOUISIANA

(In Equity.) No. 19,129

OHIO OIL COMPANY

v.

E. A. CONWAY, Supervisor of Public Accounts of the State of Louisiana

BILL OF COMPLAINT—Filed Aug. 6, 1928

To the Honorable District Court of the United States for the Eastern District of Louisiana:

Ohio Oil Company exhibits this bill of complaint against W. N. McFarland, Supervisor of Public Accounts of the State of Louisiana, and thereupon complainant says:

1

That it is a corporation, organized and chartered under the laws of the State of Ohio, and is a citizen of said State of Ohio.

2

That said W. N. McFarland is a citizen of the State of Louisiana, having his official domicile at Baton Rouge, in the Eastern District of Louisiana.

3

That complainant, in the conduct of its business, as authorized by its charter, is and has been for a number of years exploring for, drilling for and producing oil and gas in the State of Louisiana, in the Parishes hereinafter named, and selling therein such minerals as produced.

4

That complainant, since the beginning of its operations in the State of Louisiana, has paid all taxes of every kind levied by the State and Local authorities, including severance taxes, which latter taxes have, since the passage of Act No. 140 of 1922 of the Legislature of Louisiana, been levied at three per centum of the gross market value of the total production of oil and gas.

5

That upon all oil and gas which complainant has produced, or may produce during the present quarter—that is to say, the months of July, August and September—complainant will owe the State of Louisiana three per centum of the gross market value of the total production thereof; that complainant is willing and able to pay and desirous of paying such tax, which is the only tax demandable under any valid law of the State of Louisiana upon the production [fol. 3] of oil and gas; and that complainant desires to pay and insists upon the payment of a like tax upon the value of the total production of all oil and gas which it may produce during the subsequent quarters of this and subsequent years.

6

That, notwithstanding the fact that three per centum of the gross value of the production of oil and gas is the only tax legally demandable under the laws of the State of Louisiana, by reason of complainant's operations for oil and gas and its production thereof, yet the said W. N. McFarland, in his capacity as Supervisor of Public Accounts of the State of Louisiana, is going to demand of complainant sums largely in excess of such legal taxes, that such excess will amount to more than Ten Thousand Dollars ($10,000.00) for the current quarter, and for each subsequent quarter based upon complainant's present production; such excess amounting to not less than Fifty Thousand Dollars ($50,000.00) per annum.

7

That said McFarland has notified complainant and other producers of oil that he is going to demand such payment,

claiming authority and justification therefor under the terms of Act No. 5 of the Legislature of Louisiana of the year 1928.

8

That during the month of July, 1928, in the conduct of its said business, complainant produced in the several fields in which it operates, as follows:

In the Haynesville fields, in the Parish of Claiborne, 54,397.97 barrels of oil, of the value of $67,567.97; in the Cotton Valley field, in the Parish of Webster, 51,328.43 barrels of oil, of the value of $67,016.35; in the Pine Island fields, in the Parish of Caddo, 2,018.36 barrels of oil, of the value of $2,671.67; and in the Urania fields, in the Parish of LaSalle, 5,094.93 barrels of oil, of the value of $4,190.78.

Complainant shows that the severance taxes upon such production for the month of July under said Act No. 5, of 1928, would amount to more than Four Thousand Dollars ($4,000.00) more than the severance tax due by complainant [fol. 4] under the provisions of the present existing and valid statute Act No. 140 of 1922.

9

That under the terms of said Act No. 5 of 1928, the said W. N. McFarland, as Supervisor of Public Accounts, will, unless complainant pays the said illegal exaction, make and cause to be recorded in the mortgage records of the parishes wherein complainant is producing oil and gas a statement setting out the taxes claimed by the said Supervisor of Public Accounts to be due by complainant, which said statement will, under the terms of Act No. 140 of 1922, as amended by the said Act No. 5 of 1928, purport to operate as a first lien, privilege and mortgage on all the property of your complainant and to render said property subject to seizure and sale for the payment of said claim.

10

That the said Supervisor of Public Accounts, will, in the event of complainant's refusal to pay the said illegal demand, not only cause the said statement to be recorded as above set out, but, under the provisions of Act No. 140 of

1922, as amended by the said Act No. 5 of 1928, direct the Sheriff and Ex-Officio Tax Collector of each parish wherein complainant is producing oil and gas to seize and sell, for the payment of said claim, any and all property belonging to complainant which may be found within the territorial limits of such parishes, which such sale will be conducted by the Sheriff and Ex-Officio Tax Collector of each such parish upon request by the said Supervisor of Public Accounts, not only to pay the amount of the claim asserted by the said Supervisor of Public Accounts, but also to pay a penalty of two per centum per month on such claim and all other penalties provided for in the general revenue laws of the State of Louisiana.

11

That under said Act No. 5 of 1928, as it purports to amend Act No. 140 of 1922, it is made the duty of the Supervisor of Public Accounts to supervise and enforce the collection of all taxes asserted to be due under the provisions of that act, and full and complete administration of said act is [fol. 5] vested in said Supervisor of Public Accounts, with authority to compel all persons and corporations engaged in producing oil and gas to submit to him for examination their books, records and files, and to furnish to him any information required by him, with power on his part to compute the taxes and to levy penalties.

12

That for the purpose of carrying on its operations for producing petroleum in each of the parishes above named complainant has maintained for more than five years last past offices and headquarters, under whose management and supervision its operations for drilling and production have been conducted, and that in connection with said business it has expended large sums of money in each of said parishes, amounting in the aggregate to several millions of dollars; and that it will for many years to come continue to conduct said business in each of said parishes, involving very large outlays of money.

13

That in all of the parishes of Louisiana, operations for drilling for and producing oil are conducted by the same

processes, and that no substantial distinction exists between the business or occupation or means of producing oil in the various fields of the State.

14

That the oil produced by complainant in the Cotton Valley field is of 37 to 40 gravity, of the market value of $1.30 to 31.5 which has a market value of 75 cents per barrel, and is under said Act No. 5 of 1928, taxed at the rate of five cents per barrel or 6⅔ per cent of its value, and oil of the gravity of 47 and above, ranging in value from $1.61 to $1.76, which under said act is taxed at the rate of eleven cents per barrel, or 6½ per cent of its value.

That the oil produced by complainant in the Pine Island field is of 37 to 49 gravity, of the market value of $1.30 to $1.34 per barrel, taxed at the rate of ten cents per barrel, or 7.5 per cent of its value.

That the oil produced by complainant from the Urania field is of 20 gravity, of the market value of 75 cents per barrel, taxed under said act at four cents per barrel, or 5.5 per cent of its value.

[fol. 6] That the oil produced by complainant from the Haynesville field is from 33 to 36 gravity, of the market value of $1.19 to $1.25 per barrel, taxed under said act at the rate of eight cents per barrel, or 6.5 per cent of its value.

15

That very little oil is produced in South Louisiana of a gravity of more than 28, and no oil of a gravity of more than 31; that South Louisiana oil of a gravity below 28 has a market price and value of $1.15 to $1.20 per barrel, and such oil from 28 to 31 gravity, of from $1.23 to $1.27 per barrel.

That said Act No. 5 of 1928, imposes a tax upon oil of 28 gravity and below of four cents per barrel, and upon oil of 28 and below 31, of four and a quarter cents per barrel, making a practically uniform burden upon such oil of 3.4 per cent.

16

Complainant shows that said Act No. 5 of 1928, greatly increases the tax upon oil produced from the fields of North

Louisiana, wherein all of its business is located, the increase upon the production of oil by complainant being over 75 per cent in the Urania field, over 150 per cent in the Pine Island field, over 114 per cent in the Cotton Valley field, and over 116 per cent in the Haynesville field; whereas, said act increases the tax upon the production of oil in South Louisiana only in a small degree, such increase in the burden of taxation amounting to about 12 per cent, thereby imposing by purely arbitrary fiat almost the entire burden of increased taxation upon North Louisiana producers of oil and gas.

17

Complainant shows that the burden laid upon its production of oil from the fields in which it operates is the direct result of an intentional discrimination, imposed by said Act No. 5 of 1928, of a most unusual and arbitrary character, and wholly without reasonable or just basis, in this, to-wit:

(a) Because the burden laid by said act upon the production of oil by your complainant from the fields in which it operates in the State of Louisiana is grossly in excess of that laid upon and paid by producers of oil in other fields in the State of Louisiana;

[fol. 7] (b) Because the burden laid by the said act upon the production of oil by other persons and corporations engaged in identically the same occupation, and under the same circumstances, is made by said act to vary according to arbitrary standards, so that the occupation of complainant is subjected by said act to a burden of taxation more than twice as great as that of other persons engaged in identically the same occupation;

(c) Because the standard fixed in said act, levying the severance tax according to the gravity of the product severed, results in gross and unreasonable discrimination, in that such standard entirely ignores the market value of the oil produced, which varies widely in the different oil fields of the State of Louisiana; the net result thereof being to impose upon the oil produced by complainant a burden grossly excessive and discriminatory as compared with that laid by the statute upon oil produced from other fields in the State of Louisiana;

(d) Because the attempted classification of oil for the purpose of taxation in the said statute—to-wit, that of gravity—is wholly arbitrary, has no reasonable relation whatever to any ground of difference having a fair and substantial relation to the value of oil produced in the various fields of the State of Louisiana, and results in grossly discriminatory treatment as against complainant with respect to other persons similarly circumstanced;

(e) That said Act No. 5 of 1928, discriminates arbitrarily in favor of producers of oil in South Louisiana and against producers of oil in North Louisiana, that the burden imposed by it upon the business of complainant and other producers of oil in North Louisiana is grossly excessive and discriminatory as compared with the burden imposed by it upon the production of oil in South Louisiana; and

(f) That said act is based upon discrimination of a most unusual character, which particularly operates against this complainant, in that under the said statute it is compelled to pay a tax in respect of oil produced by it, the burden of which is grossly in excess of that paid by other producers of oil of identically the same gravity.

[fol. 8] 18

That because of the facts above set out said Act No. 5 of 1928 is null and void, in that same denies to complainant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

19

That said Act No. 5 of 1928 is unconstitutional, null and void, because it does not purport to levy a severance tax predicated upon either the quantity or the value of the product at the time and place of its severance, and therefore violates Section 21 of Article X of the Constitution of the State of Louisiana.

20

That the claims and threats of the said McFarland are based entirely upon said Act No. 5 of 1928, which said act, by reason of its unconstitutionality, affords no basis or

color for the acts of the said Supervisor of Public Accounts or his contentions, but renders the actions of the said McFarland illegal, and any seizure for the payment of the asserted taxes thereunder an unlawful act and a naked trespass.

21

That unless complainant does pay to the Tax Collectors of Caddo, Claiborne, La Salle and Webster Parishes, respectively, the amounts illegally claimed by said McFarland within thirty days from the 30th day of September, 1928, and thereafter, within thirty days from the expiration of each quarter-annual period, he will cause to be recorded in the mortgage records of each of said parishes a statement of the amount claimed by him to be due under the said unconstitutional enactment, Act No. 5 of 1928, and will claim and assert thereunder a lien and privilege on all the property of complainant in said parishes for the amount of the asserted taxes, penalties and costs, and will in addition, cause the respective Sheriffs and Ex-Officio Tax Collectors of said parishes, as his agents, to seize and sell all the property of complainant situated in said parishes for the payment of said asserted taxes and penalties.

22

That under the provisions of both Act No. 140 of 1922, [fol. 9] which is in force and effect, and said unconstitutional Act No. 5 of 1928, complainant must furnish, in duplicate, within thirty days from the expiration of each quarter, a sworn statement of the amount and value of its production; and that, despite the payment by complainant of the taxes due under Act No. 140 of 1922, the said McFarland will, every three months, cause to be recorded a statement which, under the said Act No. 5 of 1928, would operate as a lien and privilege on all the property of complainant and will follow same with seizure of all of complainant's property, in the manner provided in said statute.

23

That for the purpose of preventing the clouding of its titles through the recordation of such illegal liens, under

color of said unconstitutional statute, complainant has no remedy except the writ of injunction, nor has complainant any remedy for the recovery of such taxes should it pay same under the duress of the demand of the said Supervisor of Public Accounts.

24

That the law of Louisiana affords no remedy whatever for the recovery of taxes illegally exacted by the State, and complainant has no remedy except the process of injunction to prevent the seizure and sale of its property under the direction of the said Supervisor of Public Accounts.

25

That, unless the action of the said Supervisor of Public Accounts in the filing of such statements and the seizure and sale of complainant's property is prevented by writs of injunction, he will proceed to operate under the said unconstitutional statute; by interference with complainant's business, the filing of liens against its property and by causing the seizure of complainant's property by the sheriff of the several parishes in which it operates, and by the forced sale of said property to pay such illegal demand.

26

That by reason of the fact that complainant operates in several parishes, and further because of the fact that under said statute it is made complainant's duty to furnish a statement of its production every three months and be- [fol. 10] cause of the power purported to be vested in the Supervisor of Public Accounts to file a lien and proceed with seizure and sale of complainant's property every three months to satisfy the claim asserted under said unconstitutional statute, complainant cannot avoid a multiplicity of suit, except and unless this Honorable Court grant to complainant its writ of injunction to restrain said McFarland, as Supervisor of Public Accounts from claiming or asserting any taxes to be due under said Act No. 5 of 1928, and from recording or causing to be recorded in any parish wherein complainant is producing oil and gas any

statement wherein or whereby he asserts taxes to be due under said Act No. 5 of 1928, and/or from directing the Sheriff of any parish in the State of Louisiana to seize and/or sell any property of complainant to pay or satisfy any claim for taxes asserted to be due under the provisions of said Act No. 5 of 1928.

Wherefore your complainant prays that the Judge of this Court enter an order immediately calling to his assistance to hear and determine this application, two other judges, according to the provisions of the statutes of the United States; that an order be issued directing the said W. N. McFarland, Supervisor of Public Accounts and Honorable Huey P. Long, Governor of the State of Louisiana, and Honorable Percy Saint, Attorney General of said State, to show cause before this Honorable Court, as thereby constituted, at a time and place to be fixed by this Court, why writs of injunction should not issue herein restraining and prohibiting the said McFarland, as Supervisor of Public Accounts, from claiming or asserting as against complainant any taxes to be due under the provisions of Act No. 5 of 1928, and/or from recording or causing to be recorded in any parish wherein complainant is producing oil and/or gas in the State of Louisiana any statement claiming or asserting any taxes to be due by complainant under the provisions of said Act No. 5 of 1928, as well as from instructing or requesting the Sheriff of any parish wherein complainant is producing oil and/or gas in the State of Louisiana to seize and/or sell any property of complainant to pay or satisfy any tax claimed or asserted by said Supervisor of Public Accounts to be due under the provisions of said Act No. 5 of 1928; and that on the trial of said application, said writ issue.

And complainant further prays that the process of this Court as a court of equity do issue against said W. N. McFarland, Supervisor of Public Acounts of the State of [fol. 11] Louisiana, requiring him fully and completely to answer this bill of complaint; and that after due hearing on the merits, there by Judgment perpetuating the said writ of injunction and perpetually enjoining and restraining the said W. N. McFarland, Supervisor of Public Accounts, from in any manner asserting any claim against

complainant under the provisions of said Act No. 5 of 1928, and finally and definitely declaring said statute to be unconstitutional, null and void; and complainant further prays for all orders and decrees necessary or proper in the premises and for full and complete equitable relief.

(Signed) Roy L. Benoit, Thigpen, Herold, Lee & Cousin, Pugh, Grimmet & Boatner, Chas. H. Blish, Blanchard, Goldstein & Walker, Trisley Gilmer, J. S. Atkinson, Solicitors for Plaintiff.

Duly sworn to by Roy L. Benoit. Jurat omitted in printing.

[fol. 12] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE

On consideration of the foregoing verified Bill of Complaint, it is hereby ordered:

That in accordance with the provisions with the Statutes of the United States, Honorable Rufus E. Foster, Circuit Judge of the United States for the Fifth Circuit; and Honorable W. Lee Estes, Judge of the United States District Court for the Eastern District of Texas, are hereby called upon to sit with me as a United States District Court for the purpose of hearing and considering the said Bill of Complaint and the application for a preliminary injunction therein prayed for;

It is further ordered that the defendant W. N. McFarland, Supervisor of Public Accounts of the State of Louisiana, be and he is hereby ordered to show cause before this Court at the United States District Court Room in the City of Shreveport, on the 16th day of August, 1928, why the preliminary injunction prayed for by the plaintiff should not be granted;

It is further ordered that a copy of the foregoing bill and affidavit together with this order be served upon the said defendant W. N. McFarland, and also upon Honorable Huey P. Long, the Governor of Louisiana, and upon Honorable Percy Saint, Attorney General of the State of

Louisiana, and that in addition the regular process of subpœna issue.

Done officially in the City of New Orleans, on this the 6th day of August, 1928.

(Signed) Ben C. Dawkins, United States District Judge.

[fol. 13] IN UNITED STATES DISTRICT COURT

ANSWER—Filed August 16, 1929

Now, into this Honorable Court, comes the defendant, and for answer to the bill filed herein, avers:

1

The allegations of paragraph 1 are admitted.

2

The allegations of paragraph 2 are admitted.

3

The allegations of paragraph 3 are admitted.

4

For lack of sufficient information to justify a belief, the allegations of paragraph 4 are denied.

5

The allegations of paragraph 5 are denied, except as to matters of past laws, which speak for themselves.

6

The allegations of paragraph 6 are denied, except that defendant shows that, acting under due and legal laws, valid under the state and federal constitutions, in proper time and season, he will demand and attempt to collect the serevance taxes due the State of Louisiana, as set forth in Act 140 of 1922 as amended by Act 5 of 1928 of the Legislature of the State of Louisiana.

7

Allegations of paragraph 7 are denied, except that, in due course, defendant will notify the said defendant in accordance with law unless taxes are paid under the statutes as set further in paragraph 7.

8

For lack of sufficient information to justify a belief allegations of paragraph 8 are denied, except as to matters of law, which speak for themselves; that, however, no effort will be made to collect severance taxes under the amendment Act 5 of 1928, except on oil produced on and after [fol. 14] August 1, 1928.

9

Allegations of paragraph 9 are admitted except that it is denied that any act or exaction will be illegal, but the legality of the law and proposed future conduct is hereby alleged to be valid and regular.

10

Allegations of paragraph 10 are admitted, except that it is alleged that action to be taken by defendant will be proper when so taken.

11

Allegations of paragraph 11 are admitted.

12

For lack of information to justify a belief, the allegations of paragraph 12 are denied.

13

Allegations of paragraph 13 are denied.

14

For lack of information to justify a belief, the allegations of paragraph 14 are denied.

15

For lack of sufficient information to justify a belief, the allegations of paragraph 15 are denied.

16

Allegations of paragraph 16 are denied.

17

Allegations of paragraph 17 are denied.

18

Allegations of paragraph 18 are denied.

19

Allegations of paragraph 19 are denied.

20

Allegations of paragraph 20 are denied.

21

Allegations of paragraph 21 are admitted, except that defendant alleges the propriety and legality of his proposed actions in enforcing the severance tax laws and further [fol. 15] pleads the validity of said laws.

22

Admits that defendant will follow the wording and act in accordance with the statutes mentioned.

23

Allegations of paragraph 23 are denied.

24

Allegations of paragraph 24 are denied.

25

Allegations of paragraph 25 are denied.

26

Allegations of paragraph 26 are denied.

27

In further answer to this petition, your defendant shows that it is provided by the Constitution of the State of Louisiana, as follows:

"Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Such natural resources may be classified for the purpose of taxation and such taxes predicated upon either the quantity or value of the product at the time and place where it is severed. No severance tax shall be levied by any parish or other local subdivision of State." "Sec. 21 Article X."

That acting under the said Constitutional authority, the Legislature of Louisiana in the year 1922, enacted a Severance Tax, later known as Act 140 of 1922, to which reference is hereby specifically made.

That the said act was contested by the Courts and its validity upheld by the Supreme Court of the State of Louisiana and the Supreme Court of the United States.

That acting further under the authority of the said Constitution of Louisiana, in the year, 1928, the Legislature of Louisiana, by Act 5 of 1928, amended certain section of Act 140 of 1922, in and by which it assessed a tax on oil severed from the soil, according to the gravity baume of said oil.

That the plan, method and enactment contained in said amendment, Act 5 of 1928, was in all manners and respects fair, proper and valid, and in accordance with the Constitution of the State of Louisiana and the Constitution of the United States.

[fol. 16] That while the said State of Louisiana is not required to particularly respect classifications on basis of value, that, however, as a rule, to which there is slight, if any, exception, the gravity of oil severed from the soil is almost wholly controlling on the question of its value.

As an example, there is copied from The Oil Weekly, the posted prices for oil in the Homer, Haynesville, Caddo,

Eldorado, DeSoto, Crichton and Cotton Valley Oil fields of the State of Louisiana, as of May 25, 1928, which are prices offered by the said plaintiff company et als., as of May 25, 1928, to wit:

Below 28 gravity	$.91
28 to 28.9 gravity	.96
29 to 29.9 gravity	1.01
30 to 30.9 gravity	1.06
31 to 31.9 gravity	1.11
32 to 32.9 gravity	1.16
33 to 33.9 gravity	1.19
34 to 34.9 gravity	1.22
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.28
37 to 37.9 gravity	1.31
38 to 38.9 gravity	1.34
39 to 39.9 gravity	1.37
49 to 49.9 gravity	1.40
41 to 41.9 gravity	1.43
42 to 42.9 gravity	1.46
43 to 43.9 gravity	1.49
44 to 44.9 gravity	1.52
45 to 45.9 gravity	1.55
46. to 46.9 gravity	1.58
47 to 47.9 gravity	1.61
48 to 48.9 gravity	1.64
49 to 49.9 gravity	1.67
50 to 50.9 gravity	1.70
51 to 51.9 gravity	1.73
52 and Above	1.76

[fol. 17] However, there are some fluctuations, emergencies, geographical locations and transportation conditions which cause, from time to time, some exception in the value of oil by gravity, such as in the case of South Louisiana crude bordering on the deep waters of the gulf, or oil of an area near refining centers where there is a particular low freight rate, in some instances where there is an over-production of certain grades and gravities of oil, or a pipe line embargo in the oil field; but defendant shows that such exceptions are no more than are to be found in other com-

merce and do not effect the justice of the classification as followed by Act 5 of 1928.

Defendant alleges that Act 5 of 1928 is valid under the Constitution of the State of Louisiana, and under the Constitution and laws of the United States, and that he is entitled to proceed in accordance with the said act and to perform his duties to collect the tax levied thereunder.

The defendant properly shows that the method of classification and of taxes as prescribed in Act 5 of 1928, is not unfair, arbitrary or unreasonable, but that on the contrary it is in proper accord and sanctioned by the express language of our Constitution and in strict accord with the customary policies followed in commercial circles of this country.

Wherefore, defendant respectfully prays that the temporary restraining order issued herein be recalled and vacated; that the application of the plaintiff for temporary and permanent writ of injunction be denied and that the plaintiff's demand be rejected at its cost.

Prays for all further orders necessary and proper herein and for all further and general relief.

(Signed) Percy Saint, Attorney General. Huey P. Long, of Counsel.

[fol. 18] *Duly sworn to by W. N. McFarland. Jurat omitted in printing.*

[fol. 19] IN UNITED STATES DISTRICT COURT

MOTION FOR ORDER SUBSTITUTING E. A. CONWAY AS DEFENDANT IN PLACE OF W. N. MCFARLAND, SUPERVISOR OF PUBLIC ACCOUNTS, RESIGNED—Filed Oct. 5, 1928

In the above entitled and numbered cause, comes now the complainant, the Ohio Oil Company, and shows:

1

That it has heretofore filed in this Court its bill of complaint against W. N. MacFarland, Supervisor of Public Accounts wherein, in addition to other relief, it prayed for a

preliminary injunction against the said defendant, enjoining him from in any manner enforcing or attempting to enforce the provisions of Act No. 5 of 1928 of the Legislature of Louisiana, which purport to impose a severance tax upon producers of oil.

2

That said application for a preliminary injunction came on to be heard before this Court, constituted as a special court of three judges under the provisions of the statutes of the United States and that said motion for a preliminary injunction was argued and submitted, resulting in a judgment of this Court denying the said preliminary injunction.

3

That from the judgment denying the preliminary injunction complainant has taken an appeal to the Supreme Court of the United States which said appeal has been allowed by this Court, but that the appeal bond has not yet been filed.

4

Complainant now shows that said W. N. MacFarland has resigned as Supervisor of Public Accounts of the State of Louisiana, that his resignation has been duly accepted and that E. A. Conway has been appointed and has qualified as successor to said MacFarland and now legally holds and occupies the office of Supervisor of Public Accounts.

[fol. 20] 5

Complainant shows that it is entitled to have this cause continued and maintained against the said Conway as successor to the said MacFarland, and that there is substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

Wherefore complainant prays that an order be here and now entered by this Court substituting the said E. A. Conway, Supervisor of Public Accounts of the State of Louisiana, for the original defendant, W. N. MacFarland, Supervisor of Public Accounts, and that this cause be continued and maintained, both in respect of the appeal to the Supreme Court from the order of this Court denying

the preliminary injunction, and in respect of the remainder of the cause still untried in this Court, for all purposes against the said E. A. Conway, as successor in office of the said W. N. MacFarland,

(Signed) R. L. Benoit, Thigpen, Herold & Cousin, Solicitors for Complainant.

Having been served with copy of the foregoing motion, and being aware of the fact that E. A. Conway, has succeeded to the office formerly held by W. N. MacFarland, as Supervisor of Public Accounts, I formally consent to the substitution of E. A. Conway, for W. N. MacFarland as defendant in the within action.

(Signed) Percy Saint, Attorney General of Louisiana.

Oct. 2, 1928.

[fol. 21] IN UNITED STATES DISTRICT COURT

ORDER SUBSTITUTING PARTY DEFENDANT

Considering the foregoing motion and the consent of the Attorney General of Louisiana, it is now ordered that all proceedings in this cause be continued and maintained against E. A. Conway, as Supervisor of Public Accounts of the State of Louisiana as successor in office of W. N. MacFarland, the original defendant, and that said Conway be therefore substituted for all purposes in this cause as the defendant in this action.

Done and signed at New Orleans, Louisiana, on this 3rd day of October, 1928.

(Signed) Ben C. Dawkins, United States District Judge.

[fols. 22 & 23] Injunction Bond for $50,000, filed Apr. 10, 1929, omitted in printing.

[fol. 24] IN UNITED STATES DISTRICT COURT

DECREE GRANTING INTERLOCUTORY INJUNCTION—Filed Apr. 13, 1929

The application of the complainant for an interlocutory injunction coming on to be heard before this Court, under the mandate of the Supreme Court of the United States, it is hereby now ordered, adjudged, and decreed that said interlocutory injunction be and the same is hereby granted, and the defendant, E. A. Conway, Supervisor of Public Accounts of Louisiana, is hereby enjoined, restrained and strictly prohibited from proceeding against the complainant, The Ohio Oil Company, to enforce against it any of the provisions of Act No. 5 of the Louisiana Legislature of 1928.

And the Court, on consideration hereof, hereby orders and decrees that this injunction be and it is hereby granted upon the condition that the complainant (a) punctually and regularly pay the tax fixed by Act No. 140 of the Legislature of 1922, (b) give a bond in the penal sum of Fifty Thousand Dollars ($50,000.00), to be approved by any one of the Judges of this Court, conditioned that, in the event the amendatory act is adjudged valid by a final decree, the complainant and its surety will be obligated to pay, with interest and without other penalty, such further amounts as may be necessary, with the prior payments, to satisfy the tax fixed by that act, and (c) prosecute the suit with reasonable expedition to a final decree.

Thus done and signed officially by the said Court, at the City of New Orleans, State of Louisiana, on this 10th day of April, 1929.

(Signed) Rufus E. Foster, United States Circuit Judge. Ben C. Dawkins, W. L. Estes, United States District Judges.

[fol. 25] IN UNITED STATES DISTRICT COURT

U. S. MARSHAL'S RETURN ON DECREE GRANTING INTERLOCUTORY INJUNCTION—Filed Apr. 20, 1929

Received by U. S. Marshal, New Orleans, La., April 15, 1929, and on the 16th day of the same month and year I served certified copy hereof on E. A. Conway, Supervisor

of Public Accounts of the State of Louisiana, by handing the same to him in person in the City of Baton Rouge, Louisiana.

(Signed) Victor Loisel, U. S. Marshal, by E. M. Kinler, Deputy U. S. Marshal.

[fol. 26] IN UNITED STATES DISTRICT COURT

ORDERS CONTINUING CAUSE

May 13, 1929.

On motion of Dudley L. Gilbeau, Solicitor for respondent, E. A. Conway, and Percy Saint, Attorney General of the State of Louisiana.

It is ordered that this cause fixed for trial this day, be continued until tomorrow at eleven o'clock A. M., counsel for complainant being present and assenting thereto.

[fol. 27] May 14, 1929.

On motion of Percy Saint, Attorney General of State of Louisiana, and Dudley L. Guilbeau, Solicitors for E. A. Conway, Supervisor of Public Account- for the State of Louisiana, respondents herein,

It is Ordered by the Court that this cause, fixed for trial this day be continued until Tuesday, June 25th, 1929, at eleven o'clock A. M., counsel for complainant being present and taking notice thereof.

[fol. 28] June 25, 1929.

Whereupon, after hearing the pleadings read, and evidence and testimony offered on behalf of the respective parties, the cause was continued until tomorrow morning at 10:30 o'clock.

[fol. 29] June 26, 1929.

This cause as continued from yesterday, was this day resumed, counsel for the respective parties being present and the trial was proceeded with.

Whereupon, after hearing further evidence and testimony offered on behalf of the parties the cause was continued until tomorrow June 27th, 1929, at elevn o'clock A. M.

[fol. 30] Minute entry of argument and submission June 27, 1929, omitted in printing.

[fol. 31] EXHIBIT ON BEHALF OF PLAINTIFF, "MARKED PLAINTIFF A-1", BEING STATEMENT OF SEVERANCE TAX PAID BY THE OHIO OIL COMPANY UNDER THE PRESENT LAW; ALSO AMOUNT WOULD HAVE PAID UNDER THE NEW LAW—Filed Jun. 27, 1929

Statement of Severance Tax Paid by the Ohio Oil Company from January 1, to July 1, 1928, Under the Present Law; also Amount Would Have Paid under the New Law

Field	Barrels	Gravity	Price	Value	Tax	New rate	Tax	Increase
Haynesville:								
January	4,808.34	33 to 33.9	$1.22	$5,866.17	$175.98	8¢ per bbl.	$384.67	$208.69
	37,872.51	34 to 34.9	1.24	46,961.91	1,408.86	8¢ " "	3,029.80	1,620.94
	20,939.96	35 to 35.9	1.26	26,384.35	791.53	8¢ " "	1,675.20	883.67
Total	63,620.81	.....	....	$79,212.43	$2,376.37	.....	$5,089.67	2,713.30
February	74.93	32 to 32.9	1.20	89.92	2.70	8¢ " "	5.99	3.29
	80.67	30 to 30.9	1.16	93.58	2.81	4½¢ " "	3.43	.62
	429.97	36 to 36.9	1.28	550.36	16.51	10¢ " "	43.00	26.49
	2,830.48	33 to 33.9	1.22	3,453.19	103.60	8¢ " "	226.44	122.84
	13,803.72	35 to 35.9	1.26	17,392.69	521.78	8¢ " "	1,104.30	582.52
	22,501.78	34 to 34.9	1.24	27,902.20	837.07	8¢ " "	1,800.14	963.07
	1,475.44	33 to 33.9	1.19	1,751.77	52.55	8¢ " "	118.04	65.49
	11,036.05	34 to 34.9	1.22	13,463.98	403.92	8¢ " "	882.88	478.96
	6,511.44	35 to 35.9	1.25	8,139.30	244.18	8¢ " "	520.92	276.74
Total	58,744.48	.....	....	$72,836.99	$2,185.12	.....	$4,705.14	2,520.02
March	168.37	31 to 31.9	1.11	186.89	5.61	5¢ " "	8.42	2.81
	7,177.50	33 to 33.9	1.19	8,541.22	256.24	8¢ " "	574.20	317.96
	36,600.20	34 to 34.9	1.22	44,652.24	1,339.57	8¢ " "	2,928.02	1,588.45
	20,425.71	35 to 35.9	1.25	25,532.13	765.96	8¢ " "	1,634.06	868.10
Total	64,371.78	.....	....	$78,912.48	$2,367.38	.....	$5,144.70	2,777.32

April	224.84	32 to 32.9	1.16	260.81	7.82	8¢ " "	17.99	10.17
	6,243.60	33 to 33.9	1.19	7,429.88	222.90	8¢ " "	499.49	276.59
	35,735.57	34 to 34.9	1.22	43,597.40	1,307.92	8¢ " "	2,858.85	1,550.93
	18,251.57	35 to 35.9	1.25	22,814.46	684.43	8¢ " "	1,460.13	775.70
Total	60,455.58	.....	....	74,102.55	2,223.07	.....	4,836.46	2,613.39
May	99.51	32 to 32.9	1.16	115.43	3.46	8¢ " "	7.96	4.50
	6,105.77	33 to 33.9	1.19	7,265.87	217.98	8¢ " "	488.46	270.48
	36,338.17	34 to 34.9	1.22	44,332.57	1,329.98	8¢ " "	2,907.05	1,577.07
	21,532.30	35 to 35.9	1.25	26,915.38	807.46	8¢ " "	1,722.58	915.12
Total	64,075.75	.....	....	$78,629.25	$2,358.88	.....	$5,126.05	$2,767.17
June	4,222.80	33 to 33.9	1.19	5,025.13	150.75	8¢ " "	337.82	187.07
	38,392.63	34 to 34.9	1.22	46,839.01	1,405.17	8¢ " "	3,071.41	1,666.24
	17,476.27	35 to 35.9	1.25	21,845.34	655.36	8¢ " "	1,398.10	742.74
Total	60,091.70	.....	....	73,709.48	2,211.28	.....	4,807.33	2,596.05
Grand totals	371,360.10	.....	....	$457,403.18	$13,722.10	.....	$29,709.35	15,987.25

Increase, 116¼%.

[fol. 32] Cotton Valley:

January	34,114.22	31.5	$.85	$29,381.23	$881.44	5¢ per bbl.	$1,705.71	$824.27
Total January	34,114.22	.....	....	29,381.23	881.44	.....	1,705.71	824.27
February	5,372.85	31.5	.85	4,566.92	137.01	" "	268.64	131.63
	25,429.70	31.5	.75	19,072.28	572.17	" "	1,271.48	699.31
Total February	30,802.55	.....	....	23,639.20	709.18	.....	1,540.12	830.94

EXHIBIT ON BEHALF OF PLAINTIFF, "MARKED PLAINTIFF A-1"—Continued

Field	Barrels	Gravity	Price	Value	Tax	New rate	Tax	Increase
March	32,326.44	31.5	.75	24,244.83	727.34	5¢ per bbl.	1,616.32	888.98
Total March	32,326.44	.....	....	24,244.83	727.34	.....	1,616.32	888.98
April	29,383.21	31.5	.75	22,037.41	661.12	5¢ per bbl.	1,469.16	808.04
	11,119.83	49 to 49.9	1.67	18,570.12	557.10	11¢ " "	1,223.18	666.08
	55,288.79	50 to 50.9	1.70	93,990.94	2,819.73	11¢ " "	6,081.77	3,262.04
	18,729.17	51 to 51.9	1.73	32,401.46	972.04	11¢ " "	2,060.21	1,088.17
	310.82	52	1.76	547.04	16.41	11¢ " "	34.19	17.78
Total April	114,831.82	.....	....	167,546.97	5,026.40	.....	10,868.51	5,842.11
May	31,576.18	31.5	.75	23,682.14	710.46	5¢ " "	1,578.81	868.35
	2,915.01	49 to 49.9	1.67	4,868.07	146.04	11¢ " "	320.65	174.61
	12,530.98	50 to 50.9	1.70	21,302.67	639.08	11¢ " "	1,378.41	739.33
	17,908.95	51 to 51.9	1.73	30,982.48	929.48	11¢ " "	1,969.98	1,040.50
	12,705.69	52	1.76	22,362.01	670.86	11¢ " "	1,397.63	726.77
Total May	77,636.81	.....	1.76	103,197.37	3,095.92	.....	6,645.48	3,549.56
June	26,434.47	31.5	.75	19,825.85	594.78	5¢ " "	1,321.72	726.94
	576.00	47 to 47.9	1.61	927.36	27.82	11¢ " "	63.36	35.54
	4,810.38	48 to 48.9	1.64	7,889.02	236.67	11¢ " "	529.14	292.47
	3,158.64	49 to 49.9	1.67	5,274.93	158.25	11¢ " "	347.45	189.20
	812.98	50 to 50.9	1.70	1,382.07	41.46	11¢ " "	89.43	47.97
	4,620.73	51 to 51.9	1.73	7,993.86	239.81	11¢ " "	508.28	268.47
	10,627.75	52	1.76	18,704.84	561.15	11¢ " "	1,169.05	607.90
Total June	51,040.95	.....	....	61,997.93	1,859.94	.....	4,028.43	2,168.49
Grand total	340,752.79	.....	....	$410,007.53	$12,300.22	.....	$26,404.57	$14,104.35

Increase 114.6%.

[fol. 33] Pine Island:

January	176.43	29 to 29.9	1.14	$201.13	$6.03	4½¢ per bbl.	$7.50	1.47
	1,238.00	37 to 37.9	1.30	1,609.40	48.28	10¢ " "	123.80	75.52
	355.42	39 to 39.9	1.34	476.26	14.29	10¢ "	35.54	21.25
Total	1,769.85	.....	....	$2,286.79	$68.60	.....	$166.84	98.24
February	103.89	40 to 40.9	1.36	141.29	4.23	10¢ " "	10.39	1.16
	175.33	39 to 39.9	1.34	234.94	7.05	10¢ " "	17.53	10.48
	1,408.13	37 to 37.9	1.30	1,830.57	54.92	10¢ " "	140.81	85.89
Total	1,687.35	.....	....	$2,206.80	$66.20	.....	$168.73	$102.53
March	481.64	39 to 39.9	1.37	659.85	19.80	10¢ " "	48.16	28.36
	1,564.79	37 to 37.9	1.31	2,049.87	61.50	10¢ " "	156.48	94.98
Total	2,046.43	.....	....	$2,709.72	$81.30	.....	$204.64	123.34
April	178.27	39 to 39.9	1.37	244.23	4.33	10¢ " "	17.83	10.50
	160.26	38 to 38.9	1.34	214.75	6.44	10¢ " "	16.03	9.59
	297.99	36 to 36.9	1.28	381.43	11.44	10¢ " "	29.80	18.36
	1,259.31	37 to 37.9	1.31	1,649.69	49.49	10¢ " "	125.93	76.44
Total	1,895.83	.....	....	$2,490.10	$74.70	.....	$189.59	114.89
May	485.15	39 to 39.9	1.37	664.66	19.94	10¢ " "	48.51	28.57
	1,440.54	37 to 37.9	1.31	1,887.10	56.61	10¢ " "	144.05	87.44
Total	1,925.69	.....	....	$2,551.76	$76.55	.....	$192.56	116.01
June	327.51	39 to 39.9	1.37	448.69	13.46	10¢ " "	32.75	19.29
	1,427.04	37 to 37.9	1.31	1,869.42	56.08	10¢ " "	142.70	86.62
Total	1,754.55	.....	....	$2,318.11	$69.54	.....	$175.45	105.91
Grand total	11,079.70	.....	....	$14,563.28	436.89	.....	1,097.81	660.92
							% of Increase	151.2.

EXHIBIT ON BEHALF OF PLAINTIFF, "MARKED PLAINTIFF A-1"—Continued

Field	Barrels	Gravity	Price	Value	Tax	New rate	Tax	Increase
[fol. 34] Urania:								
January	4,821.57	21	.75	$3,616.18	$108.48	4¢ per bbl.	$192.86	$84.38
February	5,418.65	21	.75	4,063.99	$121.92	" "	216.75	94.83
March	6,712.20	21	.75	5,034.15	151.02	" "	268.49	117.47
April	7,079.72	21	.75	5,309.78	159.29	" "	283.19	123.90
May	7,530.22	21	.75	5,647.66	169.43	" "	301.21	131.78
June	7,384.61	21	.75	5,538.46	166.15	" "	295.38	129.23
Total	38,946.97	.....	....	$29,210.22	$876.29	.....	$1,557.88	$681.59

Increase 77.9%.

[fol. 35] Summary by Months

1928 Month	Barrels	Value	Tax	New tax	Increase
January:					
Haynesville	63,620.81	$79,212.43	$2,376.37	$5,089.67	$2,713.30
Cotton Valley	34,114.22	29,381.23	881.44	1,705.71	824.27
Pine Island	1,769.85	2,286.79	68.60	166.84	98.24
Urania	4,821.57	3,616.18	108.48	192.86	84.38
Total January	104,326.45	114,496.63	3,434.89	7,155.08	3,720.19
February:					
Haynesville	58,744.48	72,836.99	2,185.12	4,705.14	2,520.02
Cotton Valley	30,802.55	23,639.20	709.18	1,540.12	830.94
Pine Island	1,687.35	2,206.80	66.20	168.73	102.53
Urania	5,418.65	4,063.99	121.92	216.75	94.83
Total February	96,653.03	102,746.98	3,082.42	6,630.74	3,548.32

March:					
Haynesville	64,371.78	78,912.48	2,367.38	5,144.70	2,777.32
Cotton Valley	32,326.44	24,244.83	727.34	1,616.32	888.98
Pine Island	2,046.43	2,709.72	81.30	204.64	123.34
Urania	6,712.20	5,034.15	151.02	268.49	117.47
Total March	105,456.85	110,901.18	3,327.04	7,234.15	3,907.11
April:					
Haynesville	60,455.58	74,102.55	2,223.07	4,836.46	2,613.39
Cotton Valley	114,831.82	167,546.97	5,026.40	10,868.51	5,842.11
Pine Island	1,895.83	2,490.10	74.70	189.59	114.89
Urania	7,079.72	5,309.78	159.29	283.19	123.90
Total April	184,262.95	249,449.40	7,483.46	16,177.75	8,694.29
May:					
Haynesville	64,075.75	78,629.25	2,358.88	5,126.05	2,767.17
Cotton Valley	77,636.81	103,197.37	3,095.92	6,645.48	3,549.56
Pine Island	1,925.69	2,551.76	76.55	192.56	116.01
Urania	7,530.22	5,647.66	169.43	301.21	131.78
Total May	151,168.47	190,026.04	5,700.78	12,265.30	6,564.52
June:					
Haynesville	60,091.70	73,709.48	2,211.28	4,807.33	2,596.05
Cotton Valley	51,040.95	61,997.93	1,859.94	4,028.43	2,168.49
Pine Island	1,754.55	2,318.11	69.54	175.45	105.91
Urania	7,384.61	5,538.46	116.15	295.38	129.23
Total June	120,271.81	143,563.98	4,306.91	9,306.59	4,999.68
Grand total	762,139.56	$911,184.21	$27,335.50	$58,769.61	$31,434.11
Avg.	12,702	151,864	4,556	9,794	5,239

[fol. 36] **Grand Summary All Fields**

	Barrels	Value	Tax	New tax	Increase	Per cent increase
Haynesville	371,360.10	$457,403.18	$13,722.10	$29,709.35	$15,987.25	116.5
Cotton Valley	340,752.79	410,007.53	12,300.22	26,404.57	14,104.35	114.6
Pine Island	11,079.70	14,563.28	436.89	1,097.81	660.92	151.2
Urania	38,946.97	29,210.22	876.29	1,557.88	681.59	77.9
Grand total	762,139.56	$911,184.21	$27,335.50	$58,769.61	$31,434.11	114.9

[fol. 37] Statement of Severance Tax Paid by the Ohio Oil Company for Month of July, 1928, under the Present Law; Also Amount Would Have Paid under the New Law

Field	Barrels	Gravity	Price	Value	Tax	New rate	Tax	Increase
Haynesville	14,671.12	35 to 35.9	1.25	18,338.90	550.17	8¢ per bbl.	1,173.69	623.52
	37,237.19	34 to 34.9	1.22	45,429.37	1,362.88	8¢ " "	2,978.98	1,616.10
	5,698.39	33 to 33.9	1.19	6,781.08	203.43	8¢ " "	455.87	252.44
	213.48	32 to 32.9	1.16	247.64	7.43	8¢ " "	17.08	9.65
Grand total	57,820.18	.....	....	70,796.99	2,123.91	.....	4,625.62	2,501.71
								Increase, 117.7%.
[fol. 38] Cotton Valley	25,115.48	31.5	.75	18,836.60	565.09	5¢ per bbl.	1,255.78	690.69
	324.58	44 to 44.9	1.52	493.36	14.80	11¢ " "	35.70	20.90
	3,006.08	46 to 46.9	1.58	4,749.61	142.49	11¢ " "	330.67	188.18
	1,296.69	47 to 47.9	1.61	2,087.67	62.63	11¢ " "	142.64	80.01
	2,676.14	48 to 48.9	1.64	4,388.87	131.67	11¢ " "	294.38	162.71
	1,843.05	49 to 49.9	1.67	3,077.89	92.34	11¢ " "	202.74	110.40
	312.51	50 to 50.9	1.70	531.27	15.94	11¢ " "	34.38	18.44

	3,491.19	51 to 51.9	1.73	6,039.76	181.19	11¢ " "	384.03	202.84
	15,233.71	52	1.76	26,811.33	804.34	11¢ " "	1,675.71	871.37
Grand Total	53,299.43	.....	....	$67,016.36	$2,010.49	.....	$4,356.03	2,345.54
							Increase, 116.6%.	
[fol. 39] Pine Island	169.55	36	$1.28	$217.02	$6.51	10¢ per bbl.	$16.95	10.44
	1,391.76	37	1.31	1,823.21	54.70	10¢ per bbl.	139.18	84.48
	280.97	39	1.37	384.93	11.55	10¢ " "	28.10	16.55
	176.08	40	1.40	246.51	7.40	10¢ " "	17.61	10.21
Grand total	2,018.36	.....	....	$2,671.67	$80.16	.....	$201.84	121.68
							Increase, 151.7%.	
[fol. 40] Urania	1,224.19	21	.75	918.14	27.54	4¢ per bbl.	48.97	21.43
	3,233.88	21	.85	2,748.80	82.46	4¢ " "	129.36	46.90
Grand total	4,458.07	.....	....	3,666.94	110.00	.....	178.33	68.33
							Increase, 62.1%.	

[fol. 41]

Grand Summary

All Fields

Barrels	Value	Tax	New tax	Increase	Per cent increase
117,596.04	114,151.96	4,324.56	9,361.82	5,037.26	116.4

[fol. 42]

Exhibit Plaintiff "A-2,"

Being Statement, Prepared by Mr. Burdick, Showing Production of Plaintiff Company and Statement of Severance Tax Paid from August 1, 1928, to March 1, 1929, under Present Law; Also Amount Would Have Paid under Old Law—Filed Jun. 27, 1929

Statement of Severance Tax Paid by the Ohio Oil Company from August 1, 1928, to March 1, 1929, under the Present Law; Also Amount Would Have Paid under the Old Law

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
Haynesville:								
August	98.20	32 to 32.9	$1.16	$113.91	$3.42	8¢ per bbl.	$7.86	$4.44
	326.69	33 to 33.9	1.19	388.76	11.66	8¢ " "	26.14	14.48
	3,838.91	33 to 33.9	1.21	4,645.08	139.35	8¢ " "	307.11	167.76
	1,277.05	34 to 34.9	1.22	1,558.00	46.74	8¢ " "	102.16	55.42
	35,997.19	34 to 34.9	1.26	45,356.46	1,360.69	8¢ " "	2,879.78	1,519.09
	208.87	35 to 35.9	1.25	261.09	7.83	8¢ " "	16.71	8.88
	16,394.75	35 to 35.9	1.31	21,477.12	644.31	8¢ " "	1,311.58	667.27
Total	58,141.66	.....	.....	73,800.42	2,214.00	.....	4,651.34	2,437.34
September	5,798.24	33 to 33.9	1.21	7,015.87	210.48	8¢ " "	463.86	253.38
	37,059.27	34 to 34.9	1.26	46,694.68	1,400.84	8¢ " "	2,964.74	1,563.90
	10,731.39	35 to 35.9	1.31	14,058.12	421.74	8¢ " "	858.51	436.77
Total	53,588.90	.....	.....	67,768.67	2,033.06	.....	4,287.11	2,254.05

October	8,930.03	33 to 33.9	1.21	10,805.34	324.16	8¢ " "	714.40	390.24
	35,338.75	34 to 34.9	1.26	44,526.83	1,335.80	8¢ " "	2,827.10	1,491.30
	12,643.48	35 to 35.9	1.31	16,562.96	496.89	8¢ " "	1,011.48	514.59
Total	56,912.26	.....	.....	71,895.13	2,156.85	.....	4,552.98	2,396.13
November	5,440.05	33 to 33.9	1.21	6,582.46	197.47	8¢ " "	435.20	237.73
	39,463.38	34 to 34.9	1.26	49,723.86	1,491.72	8¢ " "	3,157.07	1,665.35
	7,931.39	35 to 35.9	1.31	10,390.12	311.70	8¢ " "	634.51	322.81
Total	52,834.82	.....	.....	66,696.44	2,000.89	.....	4,226.78	2,225.89
[fol. 43]								
December	243.19	32 to 32.9	$1.16	$282.10	$8.46	8¢ per bbl.	$19.46	$11.00
	5,585.48	33 to 33.9	1.21	6,758.43	202.75	8¢ " "	446.84	244.09
	39,650.82	34 to 34.9	1.26	49,960.03	1,498.80	8¢ " "	3,172.07	1,673.27
	7,024.52	35 to 35.9	1.31	9,202.12	276.06	8¢ " "	567.96	285.90
Total	52,504.01	.....	.....	66,202.68	1,986.07	.....	4,200.33	2,214.26
January	85.35	32 to 32.9	1.08	92.18	2.77	8¢ " "	6.83	4.06
	91.91	32 to 32.9	1.16	106.62	3.20	8¢ " "	7.35	4.15
	2,168.08	33 to 33.9	1.11	2,406.57	72.20	8¢ " "	173.45	101.25
	2,860.77	33 to 33.9	1.21	3,461.53	103.85	8¢ " "	228.86	125.01
	5,709.70	34 to 34.9	1.14	6,509.06	195.27	8¢ " "	456.78	261.51
	36,259.04	34 to 34.9	1.26	45,686.39	1,370.59	8¢ " "	2,900.72	1,530.13
	809.11	35 to 35.9	1.17	946.66	28.40	8¢ " "	64.73	36.33
	5,311.63	35 to 35.9	1.31	6,958.24	208.75	8¢ " "	424.93	216.18
Total	53,295.59	.....	.....	66,167.25	1,985.03	.....	4,263.65	2,278.62

EXHIBIT PLAINTIFF "A-2"—Continued

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
February	3,936.96	33 to 33.9	1.11	4,370.03	131.10	8¢ " "	314.96	183.86
	38,525.12	34 to 34.9	1.14	43,918.64	1,317.56	8¢ " "	3,082.01	1,764.45
	230.84	34 to 34.9	1.26	290.86	8.73	8¢ " "	18.47	9.74
	4,401.45	35 to 35.9	1.17	5,149.70	154.49	8¢ " "	352.12	197.63
Total	47,094.37	.....	.....	53,729.23	1 611.88	.....	3,767.56	2,155.68
Grand Total	374,371.61	.....	.....	466,259.82	13,987.78	.....	29,949.75	15,961.97

Increase, 114%.

[fol. 44] Statement of Severance Tax Paid by the Ohio Oil Company from August 1, 1928, to April 1, 1929, under the Present Law; Also Amount Would Have Paid under the Old Law

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
Cotton Valley:								
August	24,998.64	28.1 to 31	.75	18,748.98	562.47	.04½ per bbl.	1,062.44	499.97
	681.26	31.1 to 32	.75	510.95	15.33	.05 "	34.06	18.73
	270.31	32.1 to 36	.75	202.73	6.08	.08 "	21.62	15.54
	17,976.46	Above 43	1.76	31,638.57	949.16	.11 "	1,977.41	1,028.25
Total	43,926.67	.....	.....	51,101.23	1,533.04	.....	3,095.53	1,562.49
September	21,011.94	28.1 to 31	.75	15,758.96	472.77	.04½ "	893.01	420.24
	663.30	31.1 to 32	.75	497.48	14.92	.05 "	33.17	18.25
	327.91	32.1 to 36	.75	245.93	7.38	.08 "	26.23	18.85
	16,362.06	Above 43	1.76	28,797.23	863.92	.11 "	1,799.83	935.91
Total	38,365.21	.....	.....	45,299.60	1,358.99	.....	2,752.24	1,393.25

October	23,568.54	28.1 to 31	.75	17,676.41	530.29	.04½	"	1,001.66	471.37
	61.67	39 to 39.9	1.51	93.12	2.79	.10	"	6.17	3.38
	53.96	41 to 41.9	1.61	86.88	2.61	.10	"	5.40	2.79
	350.72	42 to 42.9	1.66	582.20	17.47	.10	"	35.07	17.60
	15,248.42	Above 43	1.76	26,837.22	805.12	.11	"	1,677.33	872.21
Total	39,283.31	.....	.....	45,275.83	1,358.28	.....		2,725.63	1,367.35
November	22,437.58	28.1 to 31	.75	16,828.19	504.85	.04½	"	953.60	448.75
	249.12	41 to 41.9	1.61	401.08	12.03	.10	"	24.91	12.88
	13,151.16	Above 43	1.76	23,146.04	694.38	.11	"	1,446.63	752.25
Total	35,837.86	.....	.....	40,375.31	1,211.26	.....		2,425.14	1,213.88
December	21,199.64	28.1 to 31	.75	15,899.73	476.99	.04½	"	900.98	423.99
	305.05	32.1 to 36	.75	228.79	6.86	.08	"	24.40	17.54
	64.27	40 to 40.9	1.56	100.26	3.01	.10	"	6.43	3.42
	116.10	41 to 41.9	1.61	186.92	5.61	.10	"	11.61	6.00
	310.52	42 to 42.9	1.66	515.46	15.46	.10	"	31.05	15.59
	4,170.50	Above 43	1.76	7,340.08	220.20	.11	"	458.76	238.56
Total	26,166.08	.....	.....	24,271.24	728.13	.....		1,433.23	705.10
[fol. 45]									
January	354.77	28 & Below	.75	266.08	7.98	.04	"	14.19	6.21
	20,563.47	28.1 to 31	.75	15,422.60	462.68	.04½	"	873.95	411.27
	60.12	40 to 40.9	1.32	79.36	2.38	.10	"	6.01	3.63
	114.10	41 to 41.9	1.61	183.70	5.51	.10	"	11.41	5.90
Total	21,092.46	.....	.....	15,951.74	478.55	.....		905.56	427.01
February	21,448.52	28.1 to 31	.75	16,086.39	482.59	.04½	"	911.56	428.97
	114.00	41 to 41.9	1.35	153.90	4.62	.10	"	11.40	6.78
Total	21,562.52	.....	.....	16,240.29	487.21	.....		922.96	435.75

EXHIBIT PLAINTIFF "A-2"—Continued

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
March	23,704.63	28.1 to 31	.75	17,778.47	533.35	.04½ "	1,007.45	474.10
	146.41	40 to 40.9	1.32	193.26	5.80	.10 "	14.64	8.84
Total	23,851.04	.....	.....	17,971.73	539.15	.....	1,022.09	482.94
Grand Total	250,085.15	.....	.....	256,486.97	1,694.61	.....	15,282.38	7,587.77

Increase, 99%.

[fol. 46] Statement of Severance Tax Paid by the Ohio Oil Company from August 1, 1928, to March 1, 1929, under the Present Law; Also Amount Would Have Paid under the Old Law

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
Pine Island:								
August	318.34	37 to 37.9	$1.31	$417.03	$12.51	10¢ per bbl.	$31.83	$19.32
	1,280.39	37 to 37.9	1.41	1,805.35	54.16	10¢ " "	128.04	73.88
	171.58	39 to 39.9	1.51	259.09	7.77	10¢ " "	17.16	9.39
	179.18	40 to 40.9	1.40	250.85	7.53	10¢ " "	17.92	10.39
Total	1,949.49	.....	.....	2,732.32	81.97	.....	194.95	112.98
September	1,266.20	37 to 37.9	1.41	1,785.34	53.56	10¢ " "	126.62	73.06
	355.39	39 to 39.9	1.51	536.64	16.10	10¢ " "	35.54	* 19.44
Total	1,621.59	.....	.....	2,321.98	69.66	.....	162.16	92.50
October	1,135.20	37 to 37.9	1.41	1,600.63	48.02	10¢ " "	113.52	65.50
	477.07	38 to 38.9	1.46	696.52	20.90	10¢ " "	47.71	26.81

	170.08	39 to 39.9	1.51	256.82	7.70	10¢ " "	17.01	9.31
	180.93	40 to 40.9	1.56	282.25	8.47	10¢ " "	18.09	9.62
Total	1,963.28	.....	.....	2,836.22	85.09	.....	196.33	111.24
November	1,258.98	37 to 37.9	1.41	1,775.16	53.25	10¢ " "	125.90	72.65
	173.51	40 to 40.9	1.56	270.68	8.12	10¢ " "	17.35	9.23
	107.55	41 to 41.9	1.61	173.16	5.20	10¢ " "	10.75	5.55
Total	1,540.04	.....	.....	2,219.00	66.57	.....	154.00	87.43
December	1,437.14	37 to 37.9	1.41	2,026.37	60.79	10¢ " "	143.71	82.92
	358.59	41 to 41.9	1.61	577.33	17.32	10¢ " "	35.86	18.54
Total	1,795.73	.....	.....	2,603.70	78.11	.....	179.57	101.46

[fol. 47]

January	334.14	40 to 40.9	$1.56	$521.26	$15.64	10¢ per bbl.	$33.41	$17.77
	179.14	40 to 40.9	1.32	236.46	7.09	10¢ " "	17.92	10.88
	638.22	37 to 37.9	1.23	785.01	23.55	10¢ " "	63.82	40.27
	958.40	37 to 37.9	1.41	1,351.34	40.54	10¢ " "	95.84	55.30
Total	2,109.90	.....	.....	2,894.07	86.82	.....	210.99	124.17
February	954.44	37 to 37.9	1.23	1,173.96	35.22	10¢ " "	95.44	60.22
	181.12	40 to 40.9	1.32	239.08	7.17	10¢ " "	18.11	10.94
	.15	40 to 40.9	1.56	.23	.01	10¢ " "	.02	.01
Total	1,135.71	.....	.....	1,413.27	42.40	.....	113.57	71.17
Grand Totals.....	12,115.74	.....	.....	17,020.56	510.62	.....	1,211.57	700.95

Increase, 137%.

EXHIBIT PLAINTIFF "A-2"—Continued

[fol. 48] Statement of Severance Tax Paid by the Ohio Oil Company from August 1, 1928, to March 1, 1929, under the Present Law; Also Amount Would Have Paid under the Old Law

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
Urania:								
August	315.00	Below 28°	$.75	$236.25	$7.09	4¢ per bbl.	$12.60	$5.51
	3,433.90	"	.85	2,918.82	87.56	4¢ " "	137.36	49.80
Total	3,748.90	.....	.....	3,155.07	94.65	.....	149.96	55.31
September	2,551.59	"	.85	2,168.85	65.07	4¢ " "	102.06	36.99
October	948.62	"	.85	806.33	24.19	4¢ " "	37.94	13.75
November	685.33	"	.85	582.53	17.48	4¢ " "	27.41	9.93
	2,628.18	"	.90	2,365.36	70.96	4¢ " "	105.13	34.17
Total	3,313.51	.....	.....	2,947.89	88.44	.....	132.54	44.10
December	3,155.46	"	.90	2,839.91	85.20	4¢ " "	126.22	41.02
January	1,185.91	"	.90	1,067.32	32.02	4¢ " "	47.44	15.42
Grand Total	14,903.99	.....	.....	12,985.37	389.57	.....	596.16	206.59

Increase, 53%.

[fol. 49] Statement of Severance Tax Paid by the Ohio Oil Company for March, 1929, under the Present Law; Also Amount Would Have Paid under Old Law

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
Haynesville:								
March	162.46	32 to 32.9	1.08	175.46	5.26	.08	13.00	7.74
	3,531.26	33 to 33.9	1.11	3,919.70	117.59	.08	282.50	164.91

	43,340.17	34 to 34.9	1.14	49,407.79	1,482.23	.08	3,467.21	1,984.98
	4,850.61	35 to 35.9	1.17	5,675.21	170.26	.08	388.05	217.79
Total	51,884.50	.....	.....	59,178.16	1,775.34	.....	4,150.76	2,375.42

Cotton Valley:

NOTE:—Cotton Valley Report for March on other sheet.

Pine Island:

March	1,581.67	37 to 37.9	1.23	1,945.45	58.36	.10	158.17	99.81
	358.85	40 to 40.9	1.32	473.68	14.21	.10	35.89	21.68
Total	1,940.52	.....	.....	2,419.13	72.57	.....	194.06	121.49

Haynesville Increase, 134%.
Pine Island Increase, 167%.
Cotton Valley Increase, 254%.

[fol. 50]

Summary by Months

1928	Barrels	Value	3% tax	New tax	Increase
August:					
Haynesville	58,141.66	73,800.42	2,314.00	4,651.34	2,437.34
Cotton Valley	43,826.67	51,101.23	1,533.04	3,095.53	1,562.49
Pine Island	1,949.49	2,732.32	81.97	194.95	112.98
Urania	3,748.90	3,155.07	94.65	149.96	55.31
Total August	107,766.72	130,789.04	3,923.66	8,091.78	4,168.12
September:					
Haynesville	53,588.90	67,768.67	2,033.06	4,287.11	2,254.05
Cotton Valley	38,365.21	45,299.60	1,358.99	2,752.24	1,393.25
Pine Island	1,621.59	2,321.98	69.66	162.16	92.50
Uraina	2,551.59	2,168.85	65.07	102.06	36.99
Total September	96,127.29	117,559.10	3,526.78	7,303.57	3,776.79

EXHIBIT PLAINTIFF "A-2"—Continued

Field	Barrels	Gravity	Price	Value	3% tax	New rate	Tax	Increase
October:								
Haynesville			56,912.26	71,895.13	2,156.85	4,552.98		2,396.13
Cotton Valley			39,283.31	45,275.83	1,358.28	2,725.63		1,367.35
Pine Island			1,963.28	2,836.22	85.09	196.33		111.24
Urania			948.62	806.33	24.19	37.94		13.75
Total October			99,107.47	120,813.51	3,624.41	7,512.88		3,888.47
November:								
Haynesville			52,834.82	66,696.44	2,000.89	4,226.78		2,225.89
Cotton Valley			35,837.86	40,375.31	1,211.26	2,425.14		1,213.88
Pine Island			1,540.04	2,219.00	66.57	154.00		87.43
Urania			3,313.51	2,947.89	88.44	132.54		44.10
Total November			93,526.23	112,238.64	3,367.16	6,938.46		3,571.30
December:								
Haynesville			52,504.01	66,202.68	1,986.07	4,200.33		2,214.26
Cotton Valley			26,166.08	24,271.24	728.13	1,433.23		705.10
Pine Island			1,795.73	2,603.70	78.11	179.57		101.46
Urania			3,155.46	2,839.91	85.20	126.22		41.02
Total December			83,621.28	95,917.53	2,877.51	5,939.35		3,061.84

[fol. 51]

1929	Barrels	Value	3% tax	New tax	Increase
January:					
Haynesville	53,295.59	66,167.25	1,985.03	4,263.65	2,278.62
Cotton Valley	21,092.46	15,951.74	478.55	905.56	427.01

PLAINTIFFS EXHIBIT "B"! being pages 128 and 130 from THE OIL WEEKLY of MAY 25, 1928, filed JUN 27 1929.

CRUDE OIL PRICE QUOTATIONS

CRUDE PRICE CHANGES

Findlay, Ohio, May 18 — Effective at the opening of the market today, The Ohio Oil Company advanced the market price of Kevin-Sunburst, Montana, crude, 15 cents per barrel, making the present price $1.65 per barrel at the wells.

CURRENT POSTINGS

EASTERN STATES

	May 23 1928
New York Transit	$2.80
Bradford District	2.80
National Transit	2.65
Southwest	2.65
Eureka	2.60
Buckeye	2.35
Macksburg	2.80
Gaines	2.60
Somerset	1.45
Cabell	1.35
Ragland	.95
Corning, 35-cent grade	1.45
Corning, 25-cent grade	1.55
Keister	1.10

CENTRAL STATES

Illinois	1.50
Indiana	1.32
Lima	1.55
Plymouth	1.23
Princeton	1.50
Waterloo	1.35
Wooster	1.57

WESTERN KENTUCKY

[illegible]

NORTH AND CENTRAL TEXAS

Ranger, North Texas, Mexia, Powell, Richland, Wortham, Currie, Moran, Nocona and Lytton Springs Crude
(Humble Oil and Refining Company and Gulf Refining Company)*

	May 23 1928
Below 25 gravity	.76
25 to 25.9 gravity	.81
26 to 26.9 gravity	.86
27 to 27.9 gravity	.91
28 to 28.9 gravity	.96
29 to 29.9 gravity	1.01
30 to 30.9 gravity	1.06
31 to 31.9 gravity	1.11
32 to 32.9 gravity	1.16
33 to 33.9 gravity	1.19
34 to 34.9 gravity	1.22
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.28
37 to 37.9 gravity	1.31
38 to 38.9 gravity	1.34
39 to 39.9 gravity	1.37
40 to 40.9 gravity	1.40
41 to 41.9 gravity	1.43
42 to 42.9 gravity	1.46
43 to 43.9 gravity	1.49
44 to 44.9 gravity	1.52
45 to 45.9 gravity	1.55
46 to 46.9 gravity	1.58
47 to 47.9 gravity	1.61
48 to 48.9 gravity	1.64
49 to 49.9 gravity	1.67
50 to 50.9 gravity	1.70
51 to 51.9 gravity	1.73
42 and above	1.76

* Magnolia Petroleum Company posts the schedule below on oil below 30 gravity and from 30 gravity up to 31.9. Beginning with 32 to 32.9, Magnolia's posting is the same as that of The Texas Company.

Below 30 gravity	.75
30 to 30.9 gravity	.90
31 to 31.9 gravity	1.05

Corsicana heavy is $1.00 posted by Magnolia.

SOUTH TEXAS

Mirando	1.00

SOMERSET
Grayburg

Below 33 gravity	1.05
33 to 33.9 gravity	1.07
34 to 34.9 gravity	1.09
35 to 35.9 gravity	1.11

Company advanced the market price of Kevin-Sunburst, Montana, crude, 15 cents per barrel, making the present price $1.65 per barrel at the wells.

CURRENT POSTINGS

EASTERN STATES

	May 23 1928
New York Transit	$2.80
Bradford District	2.80
National Transit	2.65
Southwest	2.65
Eureka	2.60
Buckeye	2.35
Macksburg	2.80
Gaines	2.60
Somerset	1.45
Cabell	1.35
Ragland	.95
Corning, 35-cent grade	1.45
Corning, 25-cent grade	1.55
Keister	1.10

CENTRAL STATES

Illinois	1.50
Indiana	1.32
Lima	1.55
Plymouth	1.23
Princeton	1.50
Waterloo	1.35
Wooster	1.57

WESTERN KENTUCKY

Posted by Stoll Refining Company for crude from Allen, Warren, Franklin, Davies, Barren, All grades 1.50

MID-CONTINENT

Prairie, Sinclair and Gulf

28 to 28.9 gravity	.96
29 to 29.9 gravity	1.01
30 to 30.9 gravity	1.06
31 to 31.9 gravity	1.11
32 to 32.9 gravity	1.16
33 to 33.9 gravity	1.19
34 to 34.9 gravity	1.22
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.28
37 to 37.9 gravity	1.31
38 to 38.9 gravity	1.34
39 to 39.9 gravity	1.37
40 to 40.9 gravity	1.40
41 to 41.9 gravity	1.43
42 to 42.9 gravity	1.46
43 to 43.9 gravity	1.49
44 to 44.9 gravity	1.52
45 to 45.9 gravity	1.55
46 to 46.9 gravity	1.58
47 to 47.9 gravity	1.61
48 to 48.9 gravity	1.64
49 to 49.9 gravity	1.67
50 to 50.9 gravity	1.70
51 to 51.9 gravity	1.73
52 and above	1.76

Lytton Springs Crude
(Humble Oil and Refining Company and Gulf Refining Company)*

	May 23 1928
Below 25 gravity	.76
25 to 25.9 gravity	.81
26 to 26.9 gravity	.86
27 to 27.9 gravity	.91
28 to 28.9 gravity	.96
29 to 29.9 gravity	1.01
30 to 30.9 gravity	1.06
31 to 31.9 gravity	1.11
32 to 32.9 gravity	1.16
33 to 33.9 gravity	1.19
34 to 34.9 gravity	1.22
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.28
37 to 37.9 gravity	1.31
38 to 38.9 gravity	1.34
39 to 39.9 gravity	1.37
40 to 40.9 gravity	1.40
41 to 41.9 gravity	1.43
42 to 42.9 gravity	1.46
43 to 43.9 gravity	1.49
44 to 44.9 gravity	1.52
45 to 45.9 gravity	1.55
46 to 46.9 gravity	1.58
47 to 47.9 gravity	1.61
48 to 48.9 gravity	1.64
49 to 49.9 gravity	1.67
50 to 50.9 gravity	1.70
51 to 51.9 gravity	1.73
52 and above	1.76

*Humble's postings stop at 44 and above, at $1.52.

NORTH AND CENTRAL TEXAS

(The Texas Company and Magnolia Petroleum Company)*

24 to 24.9 gravity	.76
25 to 25.9 gravity	.81
26 to 26.9 gravity	.86
27 to 27.9 gravity	.91
28 to 28.9 gravity	.96
29 to 29.9 gravity	1.01
30 to 30.9 gravity	1.06
31 to 31.9 gravity	1.11
32 to 32.9 gravity	1.16
33 to 33.9 gravity	1.19
34 to 34.9 gravity	1.22
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.28
37 to 37.9 gravity	1.31
38 to 38.9 gravity	1.34
39 to 39.9 gravity	1.37
40 to 40.9 gravity	1.40
41 to 41.9 gravity	1.43
42 to 42.9 gravity	1.46
43 to 43.9 gravity	1.49
44 to 44.9 gravity	1.52
45 to 45.9 gravity	1.55
46 to 46.9 gravity	1.58
47 to 47.9 gravity	1.61
48 to 48.9 gravity	1.64
49 to 49.9 gravity	1.67
50 to 50.9 gravity	1.70
51 to 51.9 gravity	1.73
42 and above	1.76

*Magnolia Petroleum Company posts the schedule below on oil below 30 gravity and from 30 gravity up to 31.9. Beginning with 32 to 32.9, Magnolia's posting is the same as that of The Texas Company.

Below 30 gravity	.75
30 to 30.9 gravity	.90
31 to 31.9 gravity	1.05

Corsicana heavy is $1.00 posted by Magnolia.

SOUTH TEXAS

Mirando	1.00

SOMERSET

Grayburg

Below 33 gravity	1.05
33 to 33.9 gravity	1.07
34 to 34.9 gravity	1.09
35 to 35.9 gravity	1.11
36 to 36.9 gravity	1.13
37 to 37.9 gravity	1.15
38 and above	1.17

GULF COAST

Grade "A" all companies	1.20
Gulf Coast Light Oil, below 25	1.15
25 to 25.9 gravity	1.17
26 to 26.9 gravity	1.19
27 to 27.9 gravity	1.21
28 to 28.9 gravity	1.23
29 to 29.9 gravity	1.25
30 to 30.9 gravity	1.27
31 to 31.9 gravity	1.29
32 to 32.9 gravity	1.31
33 to 33.9 gravity	1.33
34 to 34.9 gravity	1.35
35 to 35.9 gravity	1.37
36 to 36.9 gravity	1.39
37 to 37.9 gravity	1.41
38 to 38.9 gravity	1.43
39 to 39.9 gravity	1.45
40 and above	1.47

*Humble Oil & Refining Company's postings on Gulf Coast Light stop at 35 to 35.9. Its price on all crudes above 35 to $1.37 per barrel.

Magnolia Petroleum Company's postings stop at 31 to 31.9.

CALIFORNIA CRUDE OIL PRICES AT THE WELL

Following are the current prices offered by Standard Oil Company for crude oil at the well: (Price per barrel of 42 gallons in fields indicated.)

Gravity (degrees)	Signal Hill	Seal Beach	Huntington Beach	Inglewood	Olinda-Brea Canon	Athens-Rosecrans-Dominguez	Torrance	Richfield	Whittier La Habra	Montebello	Coyotte Hill	Santa Fe Springs	Newhall McKittrick Kern River	Midway Sunset Elk Hills	Buena Vista Hills	Lost Hills	Coalinga	Wheeler
14-14-9	$ .85	$ .85	$ .85	$ .85	$ .85	$ ..	$ .85	$ .85	$ .85	$ .85	$ .85	$ ..	$ .75	$ .75	$ .75	$ .75	$ .75	$ .75
15-15-9	.85	.85	.85	.85	.85	..	.85	.85	.85	.85	.85	..	.75	.75	.75	.75	.75	.75
16-16-9	.85	.85	.85	.85	.85	..	.85	.85	.85	.85	.85	..	.75	.75	.75	.75	.75	.75
17-17-9	.85	.85	.85	.85	.85	..	.85	.85	.85	.85	.85	..	.75	.75	.75	.75	.75	.75
18-18-9	.85	.85	.85	.85	.85	..	.85	.85	.85	.85	.85	..	.75	.75	.75	.75	.75	.75
19-19-9	.85	.85	.85	.85	.85	..	.85	.85	.85	.85	.85	..	.75	.75	.75	.75	.75	.75
20-20-9	.85	.85	.85	.85	.85	..	.85	.85	.85	.85	.85	..	..	.77	.77	.77	.76	.76
21-21-9	.86	.86	.86	.86	.86	..	.86	.86	.85	.85	.86	.85	..	.79	.79	.79	.77	.77
22-22-9	.87	.87	.87	.87	.87	..	.87	.87	.85	.85	.87	.85	..	.81	.81	.81	.78	.78
23-23-9	.88	.88	.88	.88	.88	..	.88	.88	..	.85	.88	.85	..	.83	.83	.83	.79	.79
24-24-9	.89	.89	.89	.89	.89	..	.89	.89	..	.85	.89	.85	..	.85	.85	.85	.80	.80
25-25-9	.90	.90	.90	.90	.90	.90	.90	.90	..	.86	.90	.86	..	.37	.87	.87	.81	.81
26-26-9	.92	.92	.92	.92	.92	.92	.92	.92	..	.87	.91	.87	..	.89	.89	.89	.83	.82
27-27-9	.94	.94	.94	.94	.94	.94	.94	.94	..	.88	.92	.88	..	.91	.91	.91	.85	.83
28-28-9	.96	.96	.96	.96	.96	.96	.96	.96	..	.89	.93	.89	..	.93	.93	.93	.87	..
29-29-9	.98	.98	.98	..	.98	.98	..	1.00	..	.91	.95	.93	..	.99	.99	.99	.91	..
30-30-9	1.00	1.00	1.00	..	1.00	1.00	..	..	..	..	..	.95	..	1.02	1.02	1.02	.93	..
31-31-9	1.03	1.03	1.03	..	..	1.03	..	..	..	..	..	.97	..	1.05	1.05	1.05	.95	..
32-32-9	1.06	1.06	1.06	..	..	1.06	..	..	..	..	..	.99	..	1.08	1.08	1.08	.97	..
33-33-9	..	..	..	..	..	1.09	..	..	..	..	..	1.01	..	..	..	1.11	.99	..
34-34-9	..	..	..	..	..	1.12	..	..	..	..	..	1.03	..	..	..	.	1.01	..
35-35-9	..	..	..	..	..	1.15	..	..	..	..	..	1.06	..	..	..	..	..	..
36-36-9	..	..	..	..	..	1.18	..	..	..	..	..	1.09	..	..	..	..	..	..
37-37-9	..	..	..	..	..	1.21	..	..	..	..	..	1.12	..	..	..	..	..	..
38-38-9	..	..	..	..	..	1.24	..	..	..	..	..	1.15	..	..	..	..	..	..
39-39-9	..	..	..	..	..	1.27	..	..	..	..	..	..	..	..	..	..	..	..
40-40-9	..	..	..	..	..	1.30	..	..	..	..	..	..	..	..	..	..	..	..
41-41-9	..	..	..	..	..	1.33	..	..	..	..	..	..	..	..	..	.	..	..
42-42-9	..	..	..	..	..	1.36	..											

	May 23 1928
MARKHAM	
The Texas Company	
All grades	1.00
LULING	
All grades	1.00
PANHANDLE	
GRAY COUNTY	
(Humble Oil and Refining Company, Magnolia Petroleum Company and Gulf Refining Company)	
Below 27 gravity	.60
27 to 27.9 gravity	.65
28 to 28.9 gravity	.70
29 to 29.9 gravity	.75
30 to 30.9 gravity	.80
31 to 31.9 gravity	.85
32 to 32.9 gravity	.90
33 to 33.9 gravity	.93
34 to 34.9 gravity	.96
35 to 35.9 gravity	.99
36 to 36.9 gravity	1.02
37 to 37.9 gravity	1.05
38 to 38.9 gravity	1.08
39 to 39.9 gravity	1.11
40 to 40.9 gravity	1.14
41 to 41.9 gravity	1.17
42 to 42.9 gravity	1.20
43 to 43.9 gravity	1.23
44 and above	1.26
WHEELER COUNTY	
(Humble Oil and Refining Company and Magnolia Petroleum Company)	
Below 29 gravity	.60
29 to 29.9 gravity	.65
30 to 30.9 gravity	.70
31 to 31.9 gravity	.75
32 to 32.9 gravity	.80
33 to 33.9 gravity	.83
34 to 34.9 gravity	.86
35 to 35.9 gravity	.89
36 to 36.9 gravity	.92
37 to 37.9 gravity	.95
38 to 38.9 gravity	.98
39 to 39.9 gravity	1.01
40 to 40.9 gravity	1.04
41 to 41.9 gravity	1.07
42 to 42.9 gravity	1.10
43 to 43.9 gravity	1.13
44 and above	1.16
CARSON-HUTCHINSON COUNTIES	
(Humble Oil and Refining Company, Magnolia Petroleum Company and Gulf Refining Company)	
Below 31 gravity	.60
31 to 31.9 gravity	.65
32 to 32.9 gravity	.70
33 to 33.9 gravity	.73
34 to 34.9 gravity	.76
35 to 35.9 gravity	.79
36 to 36.9 gravity	.82
37 to 37.9 gravity	.85
38 to 38.9 gravity	.88
39 to 39.9 gravity	.91
40 to 40.9 gravity	.94
41 to 41.9 gravity	.97
42 to 42.9 gravity	1.00
43 to 43.9 gravity	1.03
44 and above	1.06
WEST TEXAS	
(Humble, Gulf, Magnolia, The Marland Company and Southern Crude Oil Purchasing Company)*	
Crane- Upton, Crockett, Pecos and Winkler Counties, all grades	.60
(Magnolia Petroleum Company)	
Mitchell County	$ .80
Howard-Glasscock County (shallow)	.80
Howard-Glasscock County (deep)	.60
Col-Tex Refining Company	
Howard and Mitchell Counties	$ .80
WYOMING-MONTANA	
Wyoming	
Byron	1.33
Ferris	1.60
Elk Basin	1.33
Grass Creek	1.33
Rock Creek	1.25
Lost Soldier	.95
Lance Creek	1.33
Mule Creek	1.10
Notches	.65
Big Muddy	1.25
Osage	1.33
Hamilton Dome	.85
Pilot Butte	1.75
Torchlight-Greybull	1.33
Lander	.80
Simpson Ridge	.80
Rex Lake	1.10
South Casper Creek-Poison Spider	1.00
Salt Creek	
Midwest Refining Company	
29 to 29.9 gravity	1.14
30 to 30.9 gravity	1.16
31 to 31.9 gravity	1.18
32 to 32.9 gravity	1.20
33 to 33.9 gravity	1.22
34 to 34.9 gravity	1.24
35 to 35.9 gravity	1.26
36 to 36.9 gravity	1.28
37 and above	1.30
MONTANA	
Sunburst	$1.65
Cat Creek	1.33
Lake Basin	2.20
NEW MEXICO	
Artesia	1.00
Hogback	1.38
CANADA	
Oil Springs	2.02
Petrolia	1.95
LOUISIANA-ARKANSAS	
(All Companies)*	
Homer, Haynesville, Caddo, El Dorado, De Soto and Crichton and Cotton Valley**	
Below 28 gravity	.91
28 to 28.9 gravity	.96
29 to 29.9 gravity	1.01
30 to 30.9 gravity	1.06
31 to 31.9 gravity	1.11
32 to 32.9 gravity	1.16
33 to 33.9 gravity	1.19
34 to 34.9 gravity	1.22
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.28
37 to 37.9 gravity	1.31
38 to 38.9 gravity	1.34
39 to 39.9 gravity	1.37
40 to 40.9 gravity	1.40
41 to 41.9 gravity	1.43
42 to 42.9 gravity	1.46
43 to 43.9 gravity	1.49
44 to 44.9 gravity	1.52
45 to 45.9 gravity	1.55
46 to 46.9 gravity	1.58
47 to 47.9 gravity	1.61
48 to 48.9 gravity	1.64
49 to 49.9 gravity	1.67
50 to 50.9 gravity	1.70
51 to 51.9 gravity	1.73
52 and above	1.76

*Shreveport-Eldorado's postings stop at above 40 gravity.

**Below 36 gravity, the posting on Cotton Valley is 75 cents. From 36 to 52 and above the regular gravity schedule is followed.

	May 23 1928
STEPHENS	
(All Companies)	
Below 28	.85
28 to 28.9 gravity	.87
29 to 29.9 gravity	.89
30 to 30.9 gravity	.91
31 to 31.9 gravity	.93
32 and above	.95
SMACKOVER	
(All Companies)	
Below 24 gravity	.7[illegible]
24 and above	.90
Bellevue	1.25
Jennings	1.15
Vinton	1.30
Edgerly	1.30
Starks Dome	1.30
Urania	.75
Calion	.75

IMPORTS OF PETROLEUM AT PRINCIPAL UNITED STATES PORTS

American Petroleum Institute Figures (Barrels of 42 gallons)

	Week Ended May 12	Week En'd May 5
AT ATLANTIC COAST PORTS—		
Baltimore	63,000	323,000
Boston	.....	.....
New York	610,000	a53,6000
Philadelphia	146,000	395,000
Others	184,000	406,000
Total	1,003,000	1,660,000
Daily average	143,285	237,143
AT GULF COAST PORTS—		
Galveston district	40,000	.....
New Orleans and Baton Rouge	78,000	187,000
Port Arthur and Sabine district	.....	.....
Tampa	19,000	40,000
Total	137,000	227,000
Daily average	19,572	32,429
AT ALL UNITED STATES PORTS—		
Total	1,140,000	1,887,000
Daily average	162,857	269,572
Daily average four weeks ended	232,322	251,250

RECEIPTS OF CALIFORNIA OIL AT ATLANTIC AND GULF COAST PORTS

American Petroleum Institute Figures (Barrels of 42 gallons)

	Week Ended May 12	Week En'd May 5
AT ATLANTIC COAST PORTS—		
Baltimore	80,000	70,000
Boston	87,000	.....
New York	177,000	248,000
Philadelphia	179,000	282,000
Others	.....	.....
Total	523,000	600,000
Daily average	74,714	85,714
AT GULF COAST PORTS—		
Daily average	.....	.....
TOTAL—ATLANTIC AND GULF COAST PORTS	523,000	600,000
Daily average	74,714	85,714
Daily average four weeks ended	74,071	65,107
DISTRIBUTION OF TOTAL CALIFORNIA RECEIPTS IS AS FOLLOWS—		
Crude	169,000	90,000
Gasoline	354,000	345,000
Gas oil	.....	165,000
Total	523,000	600,000

(a) Revised

Pine Island	2,109.90	2,894.07	86.82	210.99	124.17
Urania	1,185.91	1,067.32	32.02	47.44	15.42
Total January	77,683.86	86,080.38	2,582.42	5,427.64	2,845.22
February:					
Haynesville	47,094.37	53,729.23	1,611.88	3,767.56	2,155.68
Cotton Valley	21,562.52	16,240.29	487.21	922.96	435.75
Pine Island	1,135.71	1,413.27	42.40	113.57	71.17
Urania	.....	.....	.....	.....	.....
Total February	69,792.60	71,382.79	2,141.49	4,804.09	2,662.60
March:					
Haynesville	51,884.50	59,178.16	1,775.34	4,150.76	2,375.42
Cotton Valley	23,851.04	17,971.73	539.15	1,022.09	482.94
Pine Island	1,940.52	2,419.13	72.57	194.06	121.49
Urania	.....	.....	.....	.....	.....
Total March	77,676.06	79,569.02	2,387.06	5,366.91	2,979.85

[fol. 52]

Summary by Fields

Field	Barrels	Value	3% tax	New tax	Increase	% increase
Haynesville	426,256.11	525,437.98	15,763.12	34,100.51	18,337.39	116%
Cotton Valley	250,085.15	256,486.97	7,694.61	15,282.38	7,587.77	99%
Pine Island	14,056.26	19,439.69	583.19	1,405.63	822.44	141%
Urania	14,903.99	12,985.37	389.57	596.16	206.59	53%
Grand total	705,301.51	814,350.01	24,430.49	51,384.68	26,954.19	110%
Average % mo	100757.	116336.	3490.	7626.	3850.	

(Here follows Plaintiff's Exhibit "B," side folios 53 and 54)

[fol. 55] PLAINTIFF EXHIBIT "C" 40

Being Statement Showing Daily Production by Gravities of the Gulf Refining Co. of La. and Others—Filed Jun. 27, 1929

Exhibit "A", Page 1.

Gulf Refining Company of La.

Statement Showing Estimated Daily Productionn by Fields in North Louisiana District

	Gravity	Total estimated production			
		Jan. 1, 1928, Bbls.	Aug. 6, 1928, Bbls.	Apr. 14, 1929, Bbls.	June 1, 1929, Bbls.
Oil purchased on gravity basis:					
Caddo Light: Gulf Refg. Co. of La.	40.5	2,421	2,330	1,879	1,867
Other Operators	40.0	9,479	7,420	6,221	6,233
		11,900	9,750	8,100	8,100
Haynesville: Gulf Refg. Co. of La.	33.9	100	93	116	107
Other Operators	34.0	6,650	5,957	5,284	5,193
		6,750	6,050	5,400	5,300

Homer: G. R. Co. of La.	36.9	906	903	858	850
Other Operators	35.0	3,644	3,447	3,092	3,250
		4,550	4,350	3,950	4,100
Decoto-Red River: G. R. Co. of La	40.5	1,054	1,173	1,100	993
Other Operators	41.0	3,146	2,877	2,850	2,907
		4,200	4,050	3,950	3,900
Pleasant Hill: Other Operators	41.0	850	600	750	500
Total on gravity basis		28,250	24,800	22,150	21,900
Percent on gravity basis		60.62%	60.49%	62.22%	62.75%
Oil purchased on flat price:	28.1 to				
Elm Grove: G. R. Co. of La	31.1	218	224	187	194
Other Operators	32.0	382	376	413	406
		600	600	600	600
Bellevue: G. R. Co. of La.	18.5	93	–0–	–0–	–0–
Other Operators	19.0	957	850	700	600
		1,050	850	700	600

PLAINTIFF EXHIBIT "C"—Continued

	Gravity	Total estimated production Jan. 1, 1928, Bbls.	Aug. 6, 1928, Bbls.	Apr. 14, 1929, Bbls.	June 1, 1929, Bbls.
Urania: Other Operators	20.0	7,850	6,900	5,850	5,850
Sub total		9,500	8,350	7,150	7,050
Per cent		39.38%	39.51%	37.78%	37.25%
Cotton Valley*: G. R. Co. of La.	28.1 31.1	156	132	121	130
Other Operators	30.0	4,644	4,518	2,929	2,570
		4,800	4,650	3,050	2,700
Caddo Heavy*: G. R. Co. of La.	Below 28	139	90	55	50
Other Operators	26.0	3,911	3,110	3,195	3,200
		4,050	3,200	3,250	3,250
Total on flat price		18,350	16,200	13,450	13,000
Per cent on flat price		39.38%	39.51%	37.78%	37.25%
Grand total		46,600	41,000	35,600	34,900

*NOTE.—Cotton Valley below 36 Gravity and Caddo Heavy below 28 Gravity are purchased at Flat Price. R-10.

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[fol. 56]

Exhibit "A," Page 2

Summary

	Total estimated production			
Purchased on Gravity Basis:	Jan. 1st, 1928, barrels	Aug 6th, 1928, barrels	April 14th, 1929, barrels	June 1, 1929, barrels
Gulf Refining Company of La	4,481	4,499	3,953	3,817
Other Operators	23,769	20,301	18,197	18,083
Total on Gravity Basis	28,250	24,800	22,150	21,900
Per Cent on Gravity Basis	60.62%	60.49%	62.22%	62.75%
Purchased on Flat Price:				
Gulf Refining Company of La	606	446	363	374
Other Operators	17,744	15,754	13,087	12,626
Total on Flat Price	18,350	16,200	13,450	13,000
Per Cent on Flat Price	39.38%	39.51%	37.78%	37.25%
Grand Total	46,600	41,000	35,600	34,900

(Here follows Exhibit B, side folios 57 and 58)

[fol. 59]

Exhibit "B," Page #3

Summary

	Total estimated production			
	Jan. 1st, 1928, barrels	Aug 6th, 1928, barrels	April 14th, 1929, barrels	June 1, 1929, barrels
Total Grade "A": Gulf Refg. Co. of La	145	133	259	206
Total Grade "A": Other Operators	6,772	8,122	12,531	9,865
Grand Total Grade "A"	6,917	8,255	12,790	10,071
Per Cent Grade "A"	43.57%	39.60%	61.35%	53.74%
Total Grade "B": Gulf Refg. Co. of La	1,767	3,138	1,885	1,870
Total Grade "B": Other Operators	7,192	9,422	6,136	6,765
Grand Total Grade "B"	8,959	12,560	8,021	8,635
Per Cent Grade "B"	56.43%	60.26%	38.48%	46.08%
Total not graded: Other Producers	0	30	35	35
Per cent not graded	....	.14%	.17%	.18%
Grand Total	15,876	20,845	20,846	18,741

[fol. 60] PLAINTIFF'S EXHIBIT "D",

Being Pages 1, 2, and 3 from Information Circular, Department of Commerce, Bureau of Mines, Number 6114, of Date April, 1929—Filed Jun. 27, 1929

Circular No. 6114, April, 1929

Information Circular, Department of Commerce, Bureau of Mines

Survey of Gravities of Domestic Crudes[1]

By G. R. Hopkins and A. B. Coons

The average gravity of the total crude petroleum produced in the United States during the year 1927 was 32.2° A. P. I., or 0.864 in terms of specific gravity. A similar study, made by the U. S. Geological Survey in 1921, gave the average gravity at that time as 32.0°.

To one who is accustomed to thinking of crude petroleum in terms of Oklahoma-Kansas and North Texas crudes it may be surprising that the average gravity for the entire country is no higher than 32.2°. The chief reason for this apparent discrepancy lies mainly in California production, which in 1927 amounted to over 25 per cent of the total, but which had an average gravity of only 24.1°. A factor of less importance was Arkansas, which, though on the decline as a producing State, exerted a material effect by reason of its average gravity of 21.6°, the lowest for any State. In view of the heavy production of light crude in the Seminole area of Oklahoma during 1927, it would appear that the average gravity should have shown more than a 0.2 per cent gain over 1921. That this did not occur was due to the fact that in the interim between 1921 and 1927 important heavy oil discoveries were made, notably the Smackover field of Arkansas.

The highest average gravity for any State was 48.5°, credited to New Mexico. That State can also boast the highest-gravity crude yet produced in quantity, that is, the crude from the Rattlesnake field in San Juan County. This crude has been assigned a gravity of 65° A. P. I., but has actually been tested as high as 75° A. P. I., corrected

[1] The Bureau of Mines will welcome reprinting of this article, but requests that the following footnote acknowledgment be used: "Printed by permission of the Director, U. S. Bureau of Mines. (Not subject to copyright.)"

for temperature.[2] Inasmuch as the gravity of the average motor fuel is about 60°, it is not hard to realize the difficulty experienced in handling such a "wild" crude.[2] Other States with high average gravities are Michigan, 44.0°; New York, 43.5°; West Virginia, 43.3°; and Pennsylvania, 42.0°. However, the combined output of these States was not large and had little effect on the average gravity for the country. The lowest gravity crude reported was that produced at Casmalia, Santa Barbara County, Calif. This crude has a gravity of 6.8° A. P. I., or 1.023 specific gravity, which indicates that it is heavier than water. Other low-gravity crudes are produced at Kern River, Calif., 14.1°, and Irma, Ark., 14.4°. The State of Texas, with the largest number of fields, had a varied assortment of gravities, with a range from below 20° to above 40° The average for the State was 32.4°, or practically the same as the national average.

[fol. 61] Little need be said regarding the production and price data given herewith, since these have already been discussed at great length. These figures were drawn from a number of sources, such as Government reports, and trade journals and associations, and in some respects are more complete than as published in the annual Mineral Resources chapters of this bureau.

The data relative to the per cent of gasoline and sulphur and to the general types of crudes were obtained from the various publications of this Bureau relating to the analyses of crude oils, principally from Bureau of Mines Bulletin 291, "Tabulated Analyses of Representative Crude Petroleums of the United States." This bureau has analyzed samples from practically all the producing fields in the United States, but in this publication the only data used were those pertaining to crudes of the same, or nearly the same, gravity as the estimated average.

Gasoline percentage recoveries for 78 samples are given herewith. These were obtained by laboratory methods as a part of the preparation of the reports above referred to on the analyses of crude oils. Although results obtained in the laboratory rarely correspond with those of actual practice, the gasoline-yield figures given herewith should

[2] Nowels, K. B., Development and relation of oil accumulation to structure in the Shiprock district of the Navajo Indian Reservation, New Mexico: Bull. of A. A. P. G., vol. 13, No. 2, Feb., 1929, p. 127.

serve as a good indication of the gasoline recovery to be expected from skimming. The production of the fields represented by the 78 samples was the equivalent of 29.4 per cent of the total production in 1927. If the gravity of each of these crudes is weighted on the basis of their production in 1927, the average gravity for all the samples works out to be 30.4°. If the per cent of gasoline in each sample is weighted in the same manner, the average gasoline content works out as 23.4 per cent. Since the average weighted gravity of the 78 samples is not far from the average for the entire country, it is probable that this computed figure of 23.4 per cent for gasoline content is close to the actual gasoline yield obtained in skimming operations. As a matter of fact, the yield of gasoline (natural gasoline deducted) by straight-run methods in 1927 was 24 per cent of the total crude run.

In general, the higher the gravity the higher the gasoline yield. However, no definite rule can be laid down as to the increment to be expected in gasoline percentage recovery for each degree rise in gravity. This is because of differences in chemical composition which, in addition to affecting gasoline recovery by means of its relation to gravity, also exerts an effect which is distinct from gravity. For example, a crude of 30° may contain a higher percentage of gasoline than one of 35°. Another, and perhaps a better way of estimating the probable increase in gasoline recovery for a 1° rise in gravity would be through a study of the differential for each degree gravity posted by the major crude buyers over a long period of time. The gravity basis as now used by the crude buyers in most fields is an attempt to make allowance for the higher gasoline content of high-gravity crudes, and over a period of time the price differential for each degree of gravity would be a rough measure of the increased percentage of gasoline that [fol. 62] might be expected.

The rapid increase in production of the West Texas fields has focused attention on the sulphur content of crudes as an item of great importance, because most West Texas

crudes are relatively high in sulphur compounds, making them difficult to refine and very corrosive to equipment. The 78 samples of crude selected for this study had a weighted average sulphur content of 1.16 per cent as compared with a weighted average of 1.90 per cent for West Texas. The highest per cent of sulphur for any of the samples was 4.13, reported for the Cat Canyon field of Santa Barbara County, Calif.; the lowest was 0.08 per cent, for Greybull field of Big Horn County, Wyo. Most of the Mid-Continent crudes are low in sulphur, the average being in the neighborhood of 0.25 per cent.

On the basis of composition or "base" there are three common types of crude, namely, paraffin-base crudes, asphalt or naphthene base crudes, and crudes of a mixed or intermediate base.

In general, paraffin-base crudes represent those which, on being chilled slowly, deposit a waxy material or "paraffin." Crudes of this type supply the major portion of the paraffin wax of commerce. Paraffin-base crudes are produced mainly in the Appalachian district, though crudes from other districts, for example, crudes from the Panhandle of Texas, are also classed as paraffin-base oils. Asphaltic base oils are those which contain little or no recoverable paraffin but usually contain asphaltic materials. Since they do not always contain asphalt the term "naphthene" is perhaps a better term for this class of oils. Asphaltic or naphthene base oils are produced mainly in California and in coastal Texas and Louisiana. Mixed or intermediate base crudes are those which can not be assigned to either of the above classes. A large portion of the crude produced in the Central States and the Mid-Continent district are of mixed or intermediate base.

A classification of crudes into these three grades, weighted as to production, provides a rough measure of the potential amounts of wax and asphalts which could be extracted if the demand warranted.

(Here follows Plaintiff's Exhibit "E," side folios 63 and 64)

Plaintiff Exhibit "E", being Pages 44 and 46 from THE OIL WEEKLY of date June 14, 1929, filed JUN 27, 1929.

CRUDE OIL PRICE QUOTATIONS

Revised June 11, 1929

EASTERN STATES
(Effective March 12, 1929)

Penna Grade Oil in New York Transit Lines (New York) $4.10
Brandford District Oil in National Transit Lines (Pennsylvania) 4.10
Penna Grade Oil in National Transit Lines (Pennsylvania) 4.00
Penna Crude Oil in Southwest Pennsylvania Lines (West Virginia) 4.00
Penna Grade Oil in Eureka Pipe Line Lines (Pennsylvania) 3.90
Penna Grade Oil in Buckeye Pipe Line Lines (Ohio) 3.85
Cabell Grade Oil in Eureka Pipe Line Lines (West Virginia) 1.35
Corning 35-cent Grade Oil in Buckeye Pipe Line Co.'s lines 1.80
Corning 25-cent Grade Oil in Buckeye Pipe Line Co.'s lines 1.75
Somerset Oil in Cumberland Pipe Line lines (Kentucky) 1.50
Ragland Grade Oil in Cumberland Pipe Line lines (Kentucky) (Effective Jan. 29, 1929) ..... .60
Keister (Pennsylvania) 1.20

CENTRAL STATES
(Effective May 21, 1929)
Posted by Ohio Oil Co.

31 to 31.9 gravity 1.15
32 to 32.9 gravity 1.25

From 33 to 44 gravity and above, Magnolia Petroleum Company prices are the same as those of Carter Oil Company.

MID-CONTINENT
(Effective May 20, 1929)
Carter Oil Company, Gulf Pipe Line Company, Sinclair Pipe Line Company, Prairie Oil and Gas Company and The Texas Company.

25 to 25.9 gravity ..... .90
26 to 26.9 gravity ..... .95
27 to 27.9 gravity 1.00
28 to 28.9 gravity 1.05
29 to 29.9 gravity 1.10
30 to 30.9 gravity 1.15
31 to 31.9 gravity 1.20
32 to 32.9 gravity 1.25
33 to 33.9 gravity 1.30
34 to 34.9 gravity 1.35
35 to 35.9 gravity 1.40
36 to 36.9 gravity 1.45
37 to 37.9 gravity 1.50
38 to 38.9 gravity 1.55
39 to 39.9 gravity 1.60
40 to 40.9 gravity 1.65
41 to 41.9 gravity 1.70
42 to 42.9 gravity 1.75
43 to 43.9 gravity 1.80
44 and above 1.85

WESTERN KENTUCKY
All grades 1.81

40 to 40.9 gravity 1.50
41 to 41.9 gravity 1.55
42 to 42.9 gravity 1.60
43 to 43.9 gravity 1.65
44 and above 1.70

WHEELER COUNTY
(Humble Oil and Refining Company and Magnolia Petroleum Company)

Below 30 gravity ..... .90
30 to 30.9 gravity ..... .95
31 to 31.9 gravity 1.00
32 to 32.9 gravity 1.05
33 to 33.9 gravity 1.10
34 to 34.9 gravity 1.15
35 to 35.9 gravity 1.20
36 to 36.9 gravity 1.25
37 to 37.9 gravity 1.30
38 to 38.9 gravity 1.35
39 to 39.9 gravity 1.40
40 to 40.9 gravity 1.45
41 to 41.9 gravity 1.50
42 to 42.9 gravity 1.55
43 to 43.9 gravity 1.60
44 and above 1.65

CARSON-HUTCHINSON COUNTIES
(Humble Oil and Refining Company, Magnolia Petroleum Company and Gulf Pipe Line Company)

Below 32 gravity ..... .90
32 to 32.9 gravity ..... .95
33 to 33.9 gravity 1.00
34 to 34.9 gravity 1.05

EASTERN STATES
(Effective March 12, 1929)

Penna Grade Oil in New York Transit Lines (New York)	$4.10
Bradford District Oil in National Transit Lines (Pennsylvania)	4.10
Penna Grade Oil in National Transit Lines (Pennsylvania)	4.00
Penna Crude Oil in Southwest Pennsylvania Lines (West Virginia)	4.00
Penna Grade Oil in Eureka Pipe Line Lines (Pennsylvania)	3.90
Penna Grade Oil in Buckeye Pipe Line Lines (Ohio)	3.85
Cabell Grade Oil in Eureka Pipe Line Lines (West Virginia)	1.35
Corning 35-cent Grade Oil in Buckeye Pipe Line Co.'s lines	1.80
Corning 25-cent Grade Oil in Buckeye Pipe Line Co.'s lines	1.75
Somerset Oil in Cumberland Pipe Line lines (Kentucky)	1.50
Ragland Grade Oil in Cumberland Pipe Line lines (Kentucky) (Effective Jan. 29, 1929)	.60
Keister (Pennsylvania)	1.20

CENTRAL STATES
(Effective May 21, 1929)
Posted by Ohio Oil Co.

Illinois	1.75
Indiana	1.57
Lima	1.80
Plymouth	1.28
Princeton	1.75
Waterloo	1.25
Wooster	1.90

MID-CONTINENT
(Effective May 21, 1929)
Magnolia Petroleum Company

Under 26	.70
26 to 26.9 gravity	.75
27 to 27.9 gravity	.85
28 to 28.9 gravity	.90
29 to 29.9 gravity	.95
30 to 30.9 gravity	1.05
31 to 31.9 gravity	1.15
32 to 32.9 gravity	1.25

From 33 to 44 gravity and above, Magnolia Petroleum Company prices are the same as those of Carter Oil Company.

MID-CONTINENT
(Effective May 20, 1929)
Carter Oil Company, Gulf Pipe Line Company, Sinclair Pipe Line Company, Prairie Oil and Gas Company and The Texas Company.

25 to 25.9 gravity	.90
26 to 26.9 gravity	.95
27 to 27.9 gravity	1.00
28 to 28.9 gravity	1.05
29 to 29.9 gravity	1.10
30 to 30.9 gravity	1.15
31 to 31.9 gravity	1.20
32 to 32.9 gravity	1.25
33 to 33.9 gravity	1.30
34 to 34.9 gravity	1.35
35 to 35.9 gravity	1.40
36 to 36.9 gravity	1.45
37 to 37.9 gravity	1.50
38 to 38.9 gravity	1.55
39 to 39.9 gravity	1.60
40 to 40.9 gravity	1.65
41 to 41.9 gravity	1.70
42 to 42.9 gravity	1.75
43 to 43.9 gravity	1.80
44 and above	1.85

WESTERN KENTUCKY

All grades	1.83

PANHANDLE
(Effective May 20, 1929)
GRAY COUNTY
(Humble Oil & Refining Company, Magnolia Petroleum Company, Gulf Pipe Line Company.

Below 29 gravity	.90
29 to 29.9 gravity	.95
30 to 30.9 gravity	1.00
31 to 31.9 gravity	1.05
32 to 32.9 gravity	1.10
33 to 33.9 gravity	1.15
34 to 34.9 gravity	1.20
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.30
37 to 37.9 gravity	1.35
38 to 38.9 gravity	1.40
39 to 39.9 gravity	1.45
40 to 40.9 gravity	1.50
41 to 41.9 gravity	1.55
42 to 42.9 gravity	1.60
43 to 43.9 gravity	1.65
44 and above	1.70

WHEELER COUNTY
(Humble Oil and Refining Company and Magnolia Petroleum Company)

Below 30 gravity	.90
30 to 30.9 gravity	.95
31 to 31.9 gravity	1.00
32 to 32.9 gravity	1.05
33 to 33.9 gravity	1.10
34 to 34.9 gravity	1.15
35 to 35.9 gravity	1.20
36 to 36.9 gravity	1.25
37 to 37.9 gravity	1.30
38 to 38.9 gravity	1.35
39 to 39.9 gravity	1.40
40 to 40.9 gravity	1.45
41 to 41.9 gravity	1.50
42 to 42.9 gravity	1.55
43 to 43.9 gravity	1.60
44 and above	1.65

CARSON-HUTCHINSON COUNTIES
(Humble Oil and Refining Company, Magnolia Petroleum Company and Gulf Pipe Line Company)

Below 32 gravity	.90
32 to 32.9 gravity	.95
33 to 33.9 gravity	1.00
34 to 34.9 gravity	1.05
35 to 35.9 gravity	1.10
36 to 36.9 gravity	1.15
37 to 37.9 gravity	1.20
38 to 38.9 gravity	1.25
39 to 39.9 gravity	1.30
40 to 40.9 gravity	1.35
41 to 41.9 gravity	1.40
42 to 42.9 gravity	1.45
43 to 43.9 gravity	1.50
44 and above	1.55

SOMERSET
Grayburg

Below 33 gravity	1.05
33 to 33.9 gravity	1.07
34 to 34.9 gravity	1.09
35 to 35.9 gravity	1.11
36 to 36.9 gravity	1.13
37 to 37.9 gravity	1.15
38 and above	1.17

CALIFORNIA CRUDE OIL PRICES AT THE WELL
(EFFECTIVE JANUARY 18, 1929)

Following are the current prices offered by Standard Oil Company for crude oil at the well: (Price per barrel of 42 gallons infields indicated)

Gravity	Ventura *	Signal Hill	Alamitos Heights-Seal Beach	Huntington Beach	Inglewood	Olinda-Brea Canon	Athens-Rosecrans Dominguez	Elwood † Terrace	Torrance	Richfield	Whittier La Habra	Montebello	Coyote Hills	Santa Fe Springs	Newhall McKittrick Kern River	Midway-Sunset Elks Hills	Buena Vista Hills	Lost Hills	Coalinga	Wheeler Ridge
14-14.9	$ .85	$ .70	$ .70	$ .70	$ .70	$ .70	$ ..	$ ..	$ .70	$ .70	$ .70	$ .70	$ .70	..	$ .50	$ .50	$ .50	$ .50	$ .50	$ .50
15-15.9	.85	.70	.70	.70	.70	.70	..	..	.70	.70	.70	.70	.70	..	.50	.50	.50	.50	.50	.50
16-16.9	.85	.70	.70	.70	.70	.70	..	..	.70	.70	.70	.70	.70	..	.50	.50	.50	.50	.50	.50
17-17.9	.85	.70	.70	.70	.70	.70	..	..	.70	.70	.70	.70	.70	..	.50	.50	.50	.50	.50	.50
18-18.9	.85	.75	.75	.75	.75	.75	..	..	.75	.75	.75	.70	.75	..	.50	.56	.56	.56	.56	.56
19-19.9	.85	.80	.80	.80	.80	.80	..	..	.80	.80	.80	.75	.80	..	.50	.62	.62	.62	.62	.62
20-20.9	.85	.85	.85	.85	.85	.85	..	..	.85	.85	.84	.80	.84	..	..	.68	.68	.68	.68	.68
21-21.9	.86	.89	.89	.89	.89	.89	..	..	.89	.89	.88	.85	.88	.89	..	.74	.74	.74	.74	.74
22-22.9	.87	.93	.93	.93	.93	.93	..	..	.93	.93	.91	.90	.91	.92	..	.80	.80	.80	.80	.80
23-23.9	.90	.97	.97	.97	.97	.97	..	..	.97	.97	..	.95	.94	.95	..	.85	.85	.85	.85	.85
24-24.9	.94	1.01	1.01	1.01	1.01	1.01	1.01	..	1.01	1.01	..	.98	.97	.98	..	.90	.90	.90	.88	.88
25-25.9	.98	1.05	1.05	1.05	1.05	1.05	1.05	..	1.05	1.05	..	1.01	1.00	1.01	..	.95	.95	.95	.91	.91
26-26.9	1.02	1.09	1.09	1.09	1.09	1.09	1.09	..	1.09	1.09	..	1.04	1.04	1.04	..	1.00	1.00	1.00	.94	.94
27-27.9	1.06	1.13	1.13	1.13	1.13	1.13	1.13	..	1.13	1.13	..	1.07	1.08	1.07	..	1.05	1.05	1.05	.98	.97
28-28.9	1.10	1.17	1.17	1.17	1.17	1.17	1.17	..	1.17	1.17	..	1.10	1.12	1.10	..	1.10	1.10	1.10	1.02	..
29-29.9	1.14	1.21	1.21	1.21	..	1.21	1.21	..	..	1.21	..	1.13	1.16	1.15	..	1.16	1.16	1.16	1.06	..
30-30.9	1.18	1.25	1.25	1.25	..	1.25	1.25	..	..	1.25	..	1.16	1.20	1.20	..	1.22	1.22	1.22	1.10	..
31-31.9	1.23	1.30	1.30	1.30	..	..	1.30	..	..	..	..	..	..	1.25	..	1.28	1.28	1.28	1.14	..
32-32.0	1.28	1.35	1.35	1.35	..	..	1.35	..	..	..	..	..	..	1.30	..	1.34	1.34	1.34	1.18	..
32-32.9	..	..	..	..	..	..	1.41	..	..	..	..	..	..	1.35	..	1.40	1.40	1.40	1.22	..
34-34.9	..	..	..	..	..	..	1.47	1.16	..	..	..	..	..	1.40	..	..	..	1.46	1.26	..
35-35.9	..	..	..	..	..	..	1.53	1.22	..	..	..	..	..	1.45	..	..	..	..	1.30	..
36-36.9	..	..	..	..	..	..	1.59	1.28	..	..	..	..	..	1.50	..	..	..	..	..	..
37-37.9	..	..	..	..	..	..	1.65	1.34	..	..	..	..	..	1.55	..	..	..	..	..	..
38-38.9	..	..	..	..	..	..	1.71	1.40	..	..	..	..	..	1.60	..	..	..	..	..	..
39-39.9	..	..	..	..	..	..	1.77	1.46	..	..	..	..	..	1.65	..	..	..	..	..	..
40-40.9	..	..	..	..	..	..	1.83	1.52	..	..	..	..	..	..	..	..	..	..	..	..
41-41.9	..	..	..	..	..	..	1.89	1.58	..	..	..	..	..	..	..	..	..	..	..	..
42-42.9	..	..	..	..	..	..	1.95	1.64	..	..	..	..	..	..	..	..	..	..	..	..

KETTLEMAN HILLS—55 degree Gravity and above $1.65 per barrel. *Union Oil Company †Changed March 18, 1929.

(See Next Page)

CRUDE OIL PRICE QUOTATIONS (*Continued from Page 44*)

WEST TEXAS
(Humble, Gulf, Magnolia, The Marland Company and Southern Crude Oil Purchasing Company)*

Crane-Upton, Crockett, Howard, Pecos and Winkler Counties and Lea County, N. Mex.

Below 25 gravity	.70
25 to 25.9 gravity	.74
26 to 26.9 gravity	.78
27 to 27.9 gravity	.82
28 to 28.9 gravity	.86
29 to 29.9 gravity	.90
30 to 30.9 gravity	.94
31 to 31.9 gravity	.98
32 to 32.9 gravity	1.02
33 to 33.9 gravity	1.06
34 to 34.9 gravity	1.10
35 to 35.9 gravity	1.14
36 and above	1.18

*Gulf does not post in Winkler County; Magnolia posts in Crane, Upton and Winkler Counties. Southern Crude Oil Purchasing Company posts only in Crane, Upton and Winkler Counties.

MARKHAM
The Texas Company
(Effective May 20, 1929)

All grades	$1.00

LULING

All grades	.90

NORTH AND CENTRAL TEXAS
(Effective May 21, 1929)
Ranger, North Texas, Mexia, Powell, Richland, Wortham, Currie, Moran, Nocona and Lytton Springs Crude
(Humble Oil and Refining Company)

Below 25	.85
25 to 25.9 gravity	.90
26 to 26.9 gravity	.95
27 to 27.9 gravity	1.00
28 to 28.9 gravity	1.05
29 to 29.9 gravity	1.10
30 to 30.9 gravity	1.15
31 to 31.9 gravity	1.20
32 to 32.9 gravity	1.25
33 to 33.9 gravity	1.30
34 to 34.9 gravity	1.35
35 to 35.9 gravity	1.40
36 to 36.9 gravity	1.45
37 to 37.9 gravity	1.50
38 to 38.9 gravity	1.55
39 to 39.9 gravity	1.60
40 to 40.9 gravity	1.65
41 to 41.9 gravity	1.70
42 to 42.9 gravity	1.75
43 to 43.9 gravity	1.80
44 and above	1.85

SOUTH TEXAS

Mirando	.90
Salt Flat	1.25

GULF COAST
(Effective May 21, 1929)

Grade "A" all companies	1.30
Gulf Coast Light Oil, below 25	1.15
25 to 25.9 gravity	1.18
26 to 26.9 gravity	1.21
27 to 27.9 gravity	1.24
28 to 28.9 gravity	1.27
29 to 29.9 gravity	1.30
30 to 30.9 gravity	1.33
31 to 31.9 gravity	1.36
32 to 32.9 gravity	1.39
33 to 33.9 gravity	1.42
34 to 34.9 gravity	1.45
35 to 35.9 gravity	1.48
36 to 36.9 gravity	1.51
37 to 37.9 gravity	1.54
38 to 38.9 gravity	1.57
39 to 39.9 gravity	1.60
40 and above	1.63

*Humble Oil & Refining Company's postings on Gulf Coast Light stop at 35 to 35.9. Its price on all crudes above 35 to $1.37 per barrel.

Magnolia Petroleum Company's postings stop at 31 to 31.9.

WYOMING-MONTANA
(Effective May 21, 1929)
Wyoming

Byron	1.33
Ferris	1.60
Elk Basin	1.65
Grass Creek	1.65
Rock Creek	1.40
Lost Soldier	1.05
Lance Creek	1.68
Mule Creek	1.20
Notches	.65
Big Muddy	1.43
Osage	1.38
Hamilton Dome	.85
Pilot Butte	1.75
Torchlight-Greybull	1.48
Lander	.80
Rex Lake	1.10
South Casper Creek-Poison Spider	1.00

Salt Creek
Midwest Refining Company

29 to 29.9 gravity	.90
30 to 30.9 gravity	.96
31 to 31.9 gravity	1.02
32 to 32.9 gravity	1.08
33 to 33.9 gravity	1.11
34 to 34.9 gravity	1.14
35 to 35.9 gravity	1.17
36 to 36.9 gravity	1.20
37 and above	1.23

MONTANA
(Effective May 24)

Sunburst	$1.75
Cat Creek	1.48
Lake Basin	2.20

NEW MEXICO

Artesia	1.08
Hogback	1.43

CANADA
(Effective May 21, 1929)

Oil Springs	2.27
Petrolia	2.20

LOUISIANA-ARKANSAS
(Effective May 22, 1929
Homer, Haynesville, Caddo, El Dorado, De Soto and Crichton and Cotton Valley*
(Atlantic Oil Producing Company, Standard of Louisiana, Magnolia Petroleum Company and The Texas Company.)

27 to 27.9 gravity	$1.00
28 to 28.9 gravity	1.05
29 to 29.9 gravity	1.10
30 to 30.9 gravity	1.15
31 to 31.9 gravity	1.20
32 to 32.9 gravity	1.25
33 to 33.9 gravity	1.30
34 to 34.9 gravity	1.35
35 to 35.9 gravity	1.40
36 to 36.9 gravity	1.45
37 to 37.9 gravity	1.50
38 to 38.9 gravity	1.55
39 to 39.9 gravity	1.60
40 to 40.9 gravity	1.65
41 to 41.9 gravity	1.70
42 to 42.9 gravity	1.75
43 to 43.9 gravity	1.80
44 gravity and above	1.85

*Shreveport-Eldorado's postings stop at above 40 gravity.

The posting on Cotton Valley is same as Caddo. From 36 to 52 and above the regular gravity schedule is followed.

The Texas Company pays North Texas gravity scale in North Louisiana.

STEPHENS
(All Companies)

Below 28 gravity	.90
28 to 28.9 gravity	.94
29 to 29.9 gravity	.98
30 to 30.9 gravity	1.02
31 to 31.9 gravity	1.06
32 gravity and above	1.10

SMACKOVER
(All Companies)

Below 24 gravity	.85
24 and above	1.00
Bellevue	1.30
Jennings	1.15
Vinton	1.30
Edgerly	1.30
Starks Dome	1.30
Urania	1.00
Calion	.75

IMPORTS OF PETROLEUM AT PRINCIPAL UNITED STATES PORTS
(Barrels of 42 gallons)

	Total Month May	Total Month April	Week Ended June 1	Week Ended May 25
AT ATLANTIC COAST PORTS—				
Baltimore	924,000	592,000	77,000	261,000
Boston	597,000	551,000	146,000	141,000
New York	4,278,000	4,117,000	778,000	1,211,000
Philadelphia	1,548,000	1,508,000	390,000	369,000
Others	692,000	677,000	137,000	319,000
Total	8,039,000	7,445,000	1,528,000	2,301,000
Daily Average	259,322	248,167	218,286	328,714
AT GULF COAST PORTS—				
Galveston Districts	207,000	206,000	.....	54,000
New Orleans and Baton Rouge	816,000	752,000	143,000	218,000
Port Arthur and Sabine District	93,000	311,000	.....	93,000
Tampa	41,000	45,000	.....	.....
Total	1,157,000	1,314,000	143,000	365,000
Daily Average	37,323	43,800	20,428	52,143
AT ALL UNITED STATES PORTS—				
Total	9,196,000	8,759,000	1,671,000	2,666,000
Daily Average	296,645	291,967	238,714	380,857

CALIFORNIA OIL RECEIPTS AT ATLANTIC AND GULF COAST PORTS
(Barrels of 42 gallons)

	Total Month May	Total Month April	Week Ended June 1	Week Ended May 25
AT ATLANTIC COAST PORTS—				
Baltimore	503,000	500,000	78,000	145,000
Boston	75,000	.....	.....	.....
New York	971,000	970,000	234,000	80,000
Philadelphia	335,000	197,000	.....	218,000
Others	66,000	267,000	.....	66,000
Total	1,950,000	1,934,000	312,000	509,000
Daily Average	62,903	64,467	44,571	72,714
AT GULF COAST PORTS—				
Total	.....	22,000	.....	.....
Daily Average	.....	733	.....	.....
AT ATLANTIC AND GULF COAST PORTS—				
Total	1,950,000	1,956,000	312,000	509,000
Daily Average	62,903	65,200	44,571	72,714
DISTRIBUTION OF TOTAL CALIFORNIA RECEIPTS IS AS FOLLOWS:				
Crude	95,000	150,000	.....	95,000
Gasoline	1,855,000	1,382,000	312,000	414,000
Kerosene Dist.	.....	150,000	.....	.....
Gas Oil	.....	274,000	.....	.....
Fuel Oil	.....	50,000	.....	.....
Total	1,950,000	1,956,000	312,000	509,000

[fol. 65] EXHIBIT ON BEHALF OF PLAINTIFF

BEING PAGE 123 FROM EIGHTH BIENNIAL REPORT OF THE DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, 1926-1928—Filed Jun. 27, 1929

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Table No. VII

Average Oil Prices, 1924-1925-1926-1927, Louisiana Fields

		Price per Barrel				Feb. 21
Gravity.		1924	1925	1926	1927	1928
North Louisiana:						
Caddo	35-37.9	1.46	1.87	2.13	1.47	1.28
Caddo	38+	$1.56	$1.97	$2.22	$1.73	$1.55
Caddo	32-34.9	1.36	1.77	2.00	1.37	1.19
Caddo	29-31.9	1.21	1.64	1.82	1.29	1.06
Caddo	26-28.9	....	....	1.47	1.22	.96
Caddo	26—	....	....	1.40	1.18	.91
Homer	35+	1.49	1.74	2.03	1.48	1.26
Homer	33-34.9	1.39	1.64	1.93	1.41	1.20
Homer	31-32.9	1.29	1.54	1.83	1.33	1.13
Homer	31—	1.14	1.39	1.70	1.30	1.09
Haynesville	33+	1.39	1.64	1.97	1.38	1.19
Haynesville	33—	1.29	1.54	1.88	1.33	1.15
Bull Bayou	38+	1.47	1.77	2.08	1.53	1.34
Bull Bayou	35-37.9	1.32	1.62	1.95	1.47	1.28
Bull Bayou	32-34.9	1.17	1.47	1.80	1.38	1.19
Chrichton	33-34.9	1.32	1.62	1.97	1.37	1.20
Bellvue	19-20	1.42	1.74	1.52	1.25	1.25
DeSoto	.....	1.52	1.82	2.18	1.44	1.31
Sabine	41	....	....	....	1.60	1.43
Cotton Valley	.....	.88	1.09	1.15	.98	.75
Urania	20.0-22.0	....	....	1.28	.94	.75
South Louisiana:						
Gulf Coast Heavy:						
Grade A	26—	1.61	1.66	1.52	1.30	1.20
Grade B	.....	....	....	1.38	1.27	1.15
Gulf Coast Light	29-29.9	....	....	1.70	1.43	1.25
Gulf Coast Light	28-28.9	....	....	1.65	1.40	1.23
Gulf Coast Light	27-27.9	....	....	1.60	1.37	1.21
Gulf Coast Light	26-26.9	....	....	1.55	1.33	1.19
Gulf Coast Light	25-25.9	....	....	1.50	1.30	1.17
Gulf Coast Light	25—	....	....	1.35	1.27	1.15

De Soto Parish near Naborton. Oil was discovered in Gulf Refining Company's No. 2 Jenkins in De Soto Parish in 1913. Red River's first oily well, No. 1 Marston, was completed in 1914 near Abington. The Chrichton Field, another of the group, was brought in as a major producing area early in 1915.

In the De Soto-Red River group the Nacatoch Sand

Being Pages 116 and 117 from Eighth Biennial Report of the Department of Conservation of the State of Louisiana, 1926-1928—Filed Jun. 27, 1929

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Table No. IV

Oil Production, South Louisiana Fields (in Barrels)

	1920*	1921	1922	1923	1924	1925	1926	1927	Total
Acadia Parish:									
Jennings Field.....	41,274,467	187,536	156,600	149,378	142,406	271,375	385,417	343,376	42,910,555
Calcasieu Parish:									
Edgerll Field.....	5,457,384	219,400	150,200	125,480	159,444	179,506	214,775	407,598	6,913,787
Vinton Field.....	15,462,321	1,256,600	1,495,800	1,943,230	1,930,621	2,409,930	2,215,270	1,811,139	28,524,911
Lockport Field.....	.....	.....	.....	.....	115,629	472,198	1,305,547	2,026,261	3,919,635
Starks Field.....	.....	.....	.....	.....	.....	.....	.....	264,113	264,113
Sulphur Mine.....	.....	.....	.....	.....	.....	.....	2,604	29,506	31,570
Cameron Parish:									
Hackberry or Kelso Bayou Field.....	.....	.....	.....	.....	.....	.....	.....	42,925	42,925
Sweet Lake Field....	.....	.....	.....	.....	.....	.....	10,755	76,465	87,220
Iberia Parish:									
Faussee Pointe or Lo-reauville Field.....	.....	.....	.....	.....	.....	.....	10,926	16,787	27,713
Jefferson Davis Parish:									
Welsh Field.....	354,776	.....	.....	.....	1,309	7,432	14,708	10,190	388,415
St. Martin Parish:									
Anse La Butte Field.	466,484	4,500	34,000	16,000	10,000	6,090	3,355	4,827	584,866
Total	63,015,432	1,708,536	1,836,600	2,234,088	2,359,409	3,346,441	4,162,817	5,032,387	83,695,710

*Prior to and including 1920.

Table No. V

Oil Production, North Louisiana Fields (in Barrels)

	1920*	1921	1922	1923	1924	1925	1926	1927	Total
Bossier Parish:									
Bellevue Field	.....	.....	1,479,905	2,250,057	1,745,980	1,171,358	829,394	476,231	7,952,925
Elm Grove Field	.....	.....	290,721	473,730	283,554	240,177	232,917	245,790	1,766,889
Caddo Parish:									
All subdivisions	82,085,848	5,391,166	4,231,555	3,998,593	4,251,319	4,087,673	4,669,421	5,703,434	114,419,009
Claiborne Parish:									
Haynesville Field	.....	2,964,972	20,299,911	10,905,194	6,160,607	4,771,337	3,439,064	2,631,817	51,172,902
Homer Field	24,177,001	12,736,884	6,293,809	3,801,938	2,891,580	2,345,000	2,105,255	1,751,989	56,103,456
De Soto Parish	12,608,300	719,000	531,000	429,000	353,000	431,000	427,850	444,450	15,943,600
Grant Parish:									
Urania Field	.....	.....	.....	.....	.....	.....	3,800	56,956	60,765
La Salle Parish:									
Urania Field	.....	.....	.....	.....	.....	16,708	4,049,444	3,556,276	7,622,428
Winn Parish:									
Urania Field	.....	.....	.....	.....	.....	.....	125,428	108,810	234,238
Red River Parish	21,494,340	2,844,000	1,778,000	1,560,665	1,231,000	937,000	912,920	945,730	31,703,655
Sabine Parish:									
Pleasant Hill Field	.....	.....	.....	.....	.....	.....	.....	226,700	226,700
Webster Parish:									
Cotton Valley Field	.....	.....	.....	.....	1,176,011	3,337,060	2,787,744	1,986,669	9,287,484
Total North La	140,365,489	24,656,022	34,904,901	23,419,177	18,093,051	17,337,313	19,583,237	18,134,852	296,494,044
Total South La	63,015,432	1,708,536	1,836,600	2,234,088	2,359,409	3,346,441	4,162,817	5,032,387	83,695,710
Total for State	203,380,921	26,364,558	36,741,501	25,653,265	20,452,460	20,683,754	23,746,054	23,167,239	380,189,754

*Prior to and including 1920.

EXHIBIT FILED ON BEHALF OF RESPONDENT, MARKED "CONWAY—2," BEING STATEMENT OF CRUDE OIL PRODUCTION OF LOUISIANA FOR 1928, FILED JUN. 27, 1929

State of Louisiana, Department of Conservation, Minerals Division

Crude Oil Production of Louisiana for 1928

North Louisiana

Parish	Field	Total for parish	
Bossier	Carterville	14,698.00 Bbls.	
	Bellevue	316,343.00 "	
	Elm Grove	220,226.00 "	
			551,267 Bbls.
Caddo	All subdivisions		4,805,744 "
Claiborne	Haynesville	2,175,315.00 Bbls.	
	Homer	1,529,660.00 "	
			3,704,975 "
DeSoto			429,820 "
Grant	Urania Field	35,653.00 Bbls.	
La Salle	Urania Field	2,447,476.00 "	
Winn	Urania Field	14,360.00 "	
			2,497,489 "
Red River	Bull Bayou	519,224.00 Bbls.	
	Critchton-Marston	417,284.00 "	
			936,508 "
Sabine	Pleasant Hill	189,786.00 Bbls.	
	Zwolle	1,500.00 "	

Webster	Cotton Valley			191,286	"
				1,720,046.	"
	Total—North Louisiana			14,837,136	Bbls.
	South Louisiana				
Acadia	Jennings			299,030	Bbls.
Calcasieu	Edgerly	359,522	Bbls.		
	Lockport	1,446,389	"		
	Starks	185,321	"		
	Sulphur Mine	913,460	"		
	Vinton	1,598,441	"		
				4,503,133	"
Cameron	Kalso Bayou	1,185,531	Bbls.		
	Sweet Lake	666,651	"		
				1,852,182	"
Ascension	McElroy or Sorrento			290,837	"
Iberia	Loreauville or Fausse Points			1,618	"
Jefferson Davis	Welsh			30,380	"
St. Martin	Anse LeButte	4,164	Bbls.		
	Bayou Boullion	199,534	"		
				203,698	"
	Total—South Louisiana			7,180,878	Bbls.
	Grand total for State			22,018,014	Bbls.

[fol. 68] EXHIBIT MARKED CONWAY 3-IIIa,

Being Excerpt from Magnolia Pipe Line Company Tariff—Filed Jun. 27, 1929

Conway 3-IIIa

Excerpt from Magnolia Pipe Line Company Local Pipe Line Tariff Applying on Crude Petroleum from Points on the Magnolia Pipe Line Company to Points on the Magnolia Pipe Line Company, as Shown Within.

The rates published in this tariff are the rates per barrel of 42 U. S. gallons each, for the interstate transportation by carrier's trunk pipe lines of crude petroleum subject to the regulations in effect at the time of shipment.

Issued January 30, 1929. Effective March 2, 1929.

Table of Rates

Rates in Cents per Barrel of 42 U. S. Gallons

Item No.	From	To	Rate
*	* * *	* * *	
17	Haynesville, Louisiana.....	Beaumont, Texas.....	30
18	Cotton Valley, Louisiana.....	Beaumont, Texas.....	30
19	Pine Island, Louisiana.....	Beaumont, Texas.....	20
20	Bull Bayou, Louisiana.....	Beaumont, Texas.....	20

General Rules

In addition to rates in Items 1 to 25, inclusive, all oil transported thereunder will be subject to a further gathering charge of 10¢ per barrel except from Mirando, Texas, where a gathering charge of 20¢ per barrel will be made.

On all deliveries to consignee's vessels or to consignee's tanks connected with pipe lines of Magnolia Pipe Line Company a further charge of 2½¢ per barrel will be made. No deliveries will be made to points not located on the trunk line of the Magnolia Pipe Line Company except under special contract therefor, for which an additional reasonable charge will be made, if such delivery is undertaken, [fol. 69] the shipper in all cases to provide, at his own expense, tanks for receiving the oil and connection between his tanks and the pipe line.

[fol. 70] EXHIBIT "CONWAY 3-a"

Being Joint Pipe Line Tariff of Gulf Pipe Line Company and Gulf Refining Company of Louisiana Fx. 2-No. 5— Filed —— —, ——

No Supplement to this Tariff will be issued except for the purpose of cancelling the Tariff.

G. P. L. Co. No. 23.

I. C. C. No. 23

Cancelling and Superseding I. C. C. No. 22

Gulf Pipe Line Company and Gulf Refining Company of Louisiana Fx. 2-No. 5 Joint Pipe Line Tariff

The rates published in this tariff are for the interstate transportation of crude petroleum, subject to the regulations of the above companies in effect at time of shipment, and apply

From the points established by the Gulf Refining Company of Louisiana for the reception of crude petroleum into its trunk lines in the oil fields in Caddo Parish, DeSoto Parish and Red River Parish, Louisiana;

To the points established by the Gulf Pipe Line Company for the delivery of crude petroleum at

Lucas, Texas, and

Port Arthur, Texas,

Rate per barrel, twenty-five cents.

And from the points established by the Gulf Refining Company of Louisiana for the reception of crude petroleum into its trunk lines in what are known as the Homer oil fields and the Haynesville oil field in Claiborne Parish, Louisiana,

To said points established by the Gulf Pipe Line Company for the delivery of crude petroleum at

Lucas, Texas, and

Port Arthur, Texas,

Rate per barrel, forty cents.

* And from the point established by the Gulf Refining Company of Louisiana for the reception of crude petroleum into its trunk lines at El Dorado, Arkansas,

To said points established by the Gulf Pipe Line Company for the delivery of crude petroleum at

Lucas, Texas, and

Port Arthur, Texas,

[fol. 71] Rate per barrel, forty-seven and one-half cents.

And from the points established by the Gulf Refining Company of Louisiana for the reception of crude petroleum into its trunk lines in what are known as the Vinton and Edgerly oil fields in Calcasieu Parish, Louisiana,

To said points established by the Gulf Pipe Line Company for the delivery of crude petroleum at

Lucas, Texas, and

Port Arthur, Texas,

Rate per barrel, twenty-cents.

In addition, all oil so transported from any of the above points will be subject to a further gathering charge of 12½¢ per barrel, except at Vinton and Edgerly where the gathering charge is 7½¢ per barrel.

Also, all deliveries to customers' vessels or to tank cars will be subject to a further charge of 2½¢ per barrel.

The rates in this tariff are subject to change at any time, as provided by law.

(*) Notice.—This is a newly installed station and service not included in cancelled tariff.

Issued October 1, 1924. Effective October 31, 1924.
F. A. Leovy, Vice-President Gulf Pipe Line Company, Frick Building Annex, Pittsburg, Pa.

[fol. 72] EXHIBIT CONWAY 4

Being Magnolia Pipe Line Company Texas Local Tariff No. A-5, Filed Jun. 27, 1929

Magnolia Pipe Line Company

Texas Local Tariff No. A-5

This tariff cancels and supersedes Magnolia Pipe Line Company Local Tariff No. A-4.

The rates published in this tariff are for the intra-state transportation of crude petroleum between the points in

the State of Texas named in the table below by carriers trunk pipe lines, being expressed in cents per barrel of 42 U. S. Gallons each, subject to the regulations prescribed by the Railroad Commission of Texas, which are printed below, and to change without notice, except as otherwise provided by law.

They apply from the points, established by this Company for the reception for transportation of crude petroleum into its pipe line in or near the oil fields or places, expressed in the horizontal columns TO the leading racks or other delivery places established by this Company at or near the points mentioned in the vertical columns opposite the points of origin in question; said table of rates being as follows, to-wit:

From / To	Burkburnett	Fort Worth	Sardis	Corsicana	De Leon	Luling	Beaumont	Magnetco	Atreco	Smiths Bluff
Electra	5	15	20	20	..	..	32.5	..	..	..
Burkburnett	..	15	20	20	..	..	32.5	..	..	..
Stephens Station	..	..	..	20	5	..	32.5	..	..	..
Olden	..	..	..	20	5	..	32.5	..	..	..
De Leon	..	..	..	20	..	..	32.5	..	..	..
Fort Worth	..	..	..	5	..	..	22.5	..	..	..
Corsicana	..	..	..	..	..	..	20	..	..	..
Groesbeck	..	..	..	..	..	..	20	..	..	..
Luling	..	..	..	..	..	..	20	..	..	..
Faulkner	..	..	..	..	..	..	20	..	..	..
Mirando	..	..	..	..	..	20	40	..	..	..
Crane	..	..	..	27.5	..	..	40	40	40	..
Midland	..	..	..	27.5	..	..	40	40	40	..
Iatan	..	..	..	27.5	..	..	40	40	40	..
Halley	..	..	..	27.5	..	..	40	40	40	40

In addition a gathering charge of ten cents (10¢) per barrel will be made against all crude oil so transported, except in the Webb-Duval-Zapata-Jim Hogg Counties (Texas) fields in which a gathering charge of twenty cents (20¢) per barrel will be made.

[fol. 73] No extra charge will be made for deliveries at destination point on carriers trunk pipe line.

The points referred to as Olden and DeLeon in the above Tariff are the points on carrier's trunk pipe line established in the Ranger-Desdemona and Stephens County Districts oil fields for the reception of oil into carriers lines. Halley,

Texas, is the receiving station for Winkler-Ward Counties oil fields; Luling, Texas, is the receiving station for Luling District oil fields; Faulkner, Texas is the receiving station of Panola County, Texas, oil fields; Mirando is the receiving station for the Webb-Duval-Zapata-Jim Hogg Counties (Texas) oil fields. Crane and Midland are receiving stations in the Crane-Upton Counties fields and Iatan is the receiving station for the Howard and Mitchell Counties oil fields.

Issued April 18, 1929. Effective April 18, 1929.

Issued by

B. H. Stephens, Vice-President and General Manager, Magnolia Pipe Line Company, Dallas, Texas.

[fol. 74] EXHIBIT MARKED "CONWAY 5-III(b)

Being Gulf Refining Co. of Louisiana Pipe Line Tariff No. 4, Filed Jun. 27, 1929

Gulf Refining Co. of Louisiana

Pipe Line Tariff No. 4

Superseding Gulf Refining Co. of Louisiana Pipe Line Tariff No. 3

This Tariff is for the intrastate transportation of crude petroleum by pipe line under the regulations hereto annexed:

1. From the established receiving station of said Company in the oil field near Jennings, Louisiana,

To the delivery station loading rock of the Company in or near the City of Jennings, as destination point, for loading there into cars to be provided by the shipper.

The charge for this transportation is 12½ cents per barrel, including such loading.

2. From the established receiving station of said Company in the oil fields near Edgerly, Louisiana,

To its delivery station loading rack in or near the town of Edgerly as destination point, for loading there into cars to be provided by the shipper.

The charge for this transportation is 12½ cents per barrel, including such loading.

3. From the established receiving stations of said Company in the oil fields known as Caddo and Pine Island, near Mooringsport, Louisiana,

To its delivery station loading rack in or near the tow- of Mooringsport, as destination point, for loading there into cars to be provided by the shipper.

The rate for this transportation is 12½ cents per barrel, including such loading.

The rates named in the transportation above include the gathering of oil from the settling tanks with which the pipe line gathering system of the Company is now or may be connected.

This tariff is subject to any changes at any time which the Company may lawfully make. The above and foregoing tariff and transportation thereunder is subject to the annexed rules and regulations of the Company.

[fol. 75] This tariff takes the place of, and supersedes, the tariff of this Company filed with the Railroad Commission of Louisiana, known as Pipe Line Tariff No. 3.

Gulf Refining Co. of Louisiana, by —— ——, Vice-President, Shreveport, Louisiana.

In force this first day of April, 1924.

[fol. 76] EXHIBIT MARKED "CONWAY 6 III (c)"

Being Shreveport-El Dorado Pipe Line Co., Inc., Pipe Line Tariff, Filed Jun. 27, 1929

I. C. C. No. 4, Cancelling I. C. C. No. 1

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

Shreveport-El Dorado Pipe Line Company, Inc.

Pipe Line Tariff

The rates published in this tariff are for the transportation of crude petroleum through the pipe lines of the Shreveport-El Dorado Pipe Line Co. Inc., and are subject to the regulations printed on page 2 hereof, and apply from points

in the States of Arkansas and Louisiana now established for the reception of crude petroleum into the lines of the Shreveport-El Dorado Pipe Line Co. Inc., to or in the vicinity of El Dorado, Arkansas and Shreveport, Louisiana.

From	To	Rate per bbl. of 42 U. S. gallons
Smackover Station, Ark.....	El Dorado, Arkansas.....	10¢ R
Smackover Station, Ark.....	Shreveport, Louisiana.....	20¢ R
Cornie Station, Ark.....	Shreveport, Louisiana.....	20¢ R
Crow Station, La. Homer Crude	Shreveport, Louisiana.....	15¢ R

R—Rates from Smackover Station, Cornie Station and Crow Station to Shreveport, La., reduced 7½ cents per barrel. Rate from Smackover Station to El Dorado reduced 2½ cents per barrel.

In addition, all oil tendered for shipment accessible to the gathering lines of this company will be subject to a gathering charge of five (5) cents per barrel.

Issued June 1, 1926. Effective July 10, 1926.

Issued by

B. H. Gray, Secretary Shreveport-El Dorado Pipe Line Co., Inc., Shreveport, La.

[fol. 77] EXHIBIT "CONWAY 7"

Being the Texas Pipe Line Company Pipe Line Tariff—Filed Jun. 27, 1929

I. C. C. No. 22, Canceling I. C. C. No. 12

The Texas Pipe Line Company

Pipe Line Tariff

From	To Port Arthur
Bull Bayou	(I) 25
Caddo	(I) 25
Crichton	(I) 25
DeSoto	(I) 25
Haynesville	(R) 30
Shreveport	(I) 25
Vinton	(I) 15

The rates published in this tariff are for the interstate transportation of crude petroleum through the pipe lines of

The Texas Pipe Line Company, are subject to the regulations printed on page 2 hereof, are expressed in cents per barrel of 42 United States gallons and apply from points in the State of Louisiana now established for the reception of crude petroleum into the pipe lines of The Texas Pipe Line Company, in the oil pools named as points of origin to the loading racks or other established delivery places of The Texas Pipe Line Company at or near point in the State of Texas named as destination.

On all deliveries at destination to consignee's vessels or tank cars connected with pipe lines of The Texas Pipe Line Company a further charge of 2½ cents per barrel.

*Additional for gathering at point of origin 12½ cents per barrel, except at Vinton where the rate therefor is 7½ cents per barrel.

The rates to Beaumont and Nederland, Texas, published in Tariff I. C. C. No. 12, are hereby canceled and no rates will hereafter be in effect to said points.

Issued July 1, 1926. Effective August 1, 1926.

J. L. Dowling, Vice-President the Texas Pipe Line Company, Houston, Texas.

(I) Increase.

(R) Reduction.

[fol. 78] EXHIBIT MARKED "CONWAY 8 III (d)"

Being Standard Pipe Line Company, Inc., Louisiana Local Tariff No. 5—Filed Jun. 27, 1929

L. P. S. C. No. 5, Cancelling L. P. S. C. No. 4

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

Standard Pipe Line Company, Inc.

Louisiana Local Tariff No. 5

(Issued under L. P. S. C. Authority No. 2547-PL)

The rates named in this tariff are for the intrastate transportation by pipe line of Crude Petroleum Oil subject to the regulations named herein.

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*Gathering charges based on zone system, published in Tariff I. C. C. No. 12, are hereby canceled and gathering charges as herein shown will hereafter be in effect.

From	To	Rate per barrel of 42 U. S. gallons
Haynesville Station, La.....	Anchorage, La.....	30¢
Weller Station, La.....	Anchorage, La.....	30¢
Caddo Station, La.....	Anchorage, La.....	20¢
Lewis Station, La.....	Anchorage, La.....	20¢
Moore Station, La.....	Anchorage, La.....	20¢
De Sota Station, La.....	Anchorage, La.....	20¢
Flora Station, La.....	Anchorage, La.....	20¢
Bellevue Station, La.....	Princeton, La.....	5¢

In addition, all crude petroleum oil tendered for shipment in Louisiana accessible to the gathering lines of this company will be subject to a gathering charge of twelve and one-half (12½¢) cents per barrel.

A charge of two and one-half (2½¢) cents per barrel will be made for loading into railroad tank cars.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this company and as are lawfully in effect on date of shipment and lawfully on file with the Louisiana Public Service Commission as to intrastate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued May 8, 1928. Effective June 8, 1928.

Issued by H. T. Austermell, Secretary Standard Pipe Line Co., Inc., Baton Rouge, La.

(Respondent's Exhibits "Conway 9 and 10," side folios 79, 80, and 81)

* Denotes change.

RESPONDENTS EXHIBIT marked "CONWAY - 9" being page 141 from THE OIL AND GAS JOURNAL of date June 13, 1929, filed JUN 27 1929.



REFINERY AND CRUDE PRICES

Quotations on refined products are for interstate or export movement unless otherwise noted.



CALIFORNIA—												
130 vis., 2¼-3 color	.10½	.10½	.10½	.10½	.10½	.10½						
200 vis., 2½-3 color	.11½	.11½	.11½	.11½	.11½	.11½						
300 vis., 3-3¼ color	.13	.13½	.13	.13½	.13	.13½						
350 vis., 3½-4 color	.13½	.13½	.13½	.13½	.13½	.13½						
400 vis., 3½-4 color	.15	.15½	.15	.15½	.15	.15½						
Red Neutral:												
200 vis., 4½-5 color	.11	.11½	.11	.11½	.11	.11½						
300 vis., 5-6 color	.12	.12¼	.12	.12¼	.12	.12¼						
400 vis., 5-6 color	.13½	.14	.13½	.14	.13½	.14						
500 vis., 4½-5 color	.14¼	.15½	.14¼	.15½	.15¼	.15½						
500 vis., 5-6½ color	.15	.15½	.15	.15½	.15	.15½						
900 vis., 6½ plus color	.16	.16½	.16	.16¼	.16	.16¼						

Note—Bright stocks are not manufactured commercially on the Pacific Coast.

NEW YORK (BAYONNE) REFINERY PRICES

	June 11		June 4		May 28	
Gasoline, U. S. Motor, 58-60,437	.10		.10		.10	
Kerosene, water white, 41-43	.08		.08		.08	
*Fuel Oil, Bunker "C," 14-16, per bbl.	1.05		1.05		1.05	
†Fuel Oil, Diesel 28-30, per bbl.	2.00		2.00		2.00	
Gas Oil, 32-36 gravity	.05	.05½	.05	.05½	.05	.05½
25 pale Paraffin Oil	.10½		.10½		.10½	
28 pale Paraffin Oil	.07½		.07½		.07½	
28S red Paraffin Oil	.11½		.11½		.11½	
25O red Paraffin Oil	.11		.11		.11	
22S red Paraffin Oil	.09½		.09½		.09½	
20O red Paraffin Oil	.09		.09		.09	
Refined Wax:						
120-122 a.m.p., per lb.	.03½		.03½		.03½	
125-127 a.m.p., per lb	.04½		.04½		.04½	
130-132 a.m.p., per lb.	.04½		.04½		.04½	
133-135 a.m.p., per lb.	.06½		.06½		.06½	

CRUDE OIL GRAVITY TABLE

Gravity—	Okla., Kans., N. C. Tex.	No. La. and Arkansas	Crane, Upton, Crockett, Winkler, Howard, Pecos, Texas crudes, and Lea, N. Mex.	Stephens, Ark.	Wheeler (Texas Panhandle)	Gray County (Texas Panhandle)	Carson and Hutchinson (Texas Panhandle)	Salt Creek, Wyo.	Grade B & Light Crude (S. Coast)	Somerset (South Central Texas)
	1	2	3	4	5	6	7	8	9	10
24 and above	....	....	....	....	....	....	....	....	....	....
Below 24	....	....	....	....	....	....	....	....	....	....
Below 25	.85	....	.70	....	....	....	....	....	....	....
25 to 25.9	.90	....	.74	....	....	....	....	....	1.16	....
26 to 26.9	.94	....	.78	....	....	....	....	....	1.18	....
27 to 27.9	1.00	....	.82	....	....	....	....	....	1.21	....
Below 28	....	1.00	....	.90	.90	.90	.90	....	1.24	....
28 to 28.9	1.06	1.06	.86	.94	.90	.90	.90	....	....	....
29 to 29.9	1.10	1.10	.90	.98	.90	.95	.90	....	1.27	....
30 to 30.9	1.14	1.14	.94	1.02	.95	.98	1.10	....	1.30	....
31 to 31.9	1.20	1.20	.98	1.06	.98	1.00	.90	1.16	1.33	....
32 to 32.9	1.26	1.26	1.02	1.08	1.00	1.05	.90	1.20	1.36	....
33 to 33.9	1.30	1.30	1.06	1.10	1.06	1.10	.95	1.26	1.39	1.06
34 to 34.9	1.35	1.35	1.08	....	1.10	1.15	1.00	1.30	1.42	1.07
35 to 35.9	1.40	1.40	1.10	....	1.15	1.20	1.05	1.35	1.45	1.09
36 to 36.9	1.45	1.45	1.14	....	1.20	1.25	1.10	1.40	1.48	1.11
37 to 37.9	1.50	1.50	....	....	1.25	1.30	1.15	1.45	....	1.13
38 to 38.9	1.55	1.55	....	....	1.30	1.35	1.20	1.50	....	1.15
39 to 39.9	1.60	1.60	....	....	1.35	1.40	1.25	....	....	1.17
40 to 40.9	1.65	1.65	....	....	1.40	1.45	1.30	....	....	....
41 to 41.9	1.70	1.70	....	....	1.45	1.50	1.35	....	....	....
42 to 42.9	1.75	1.75	....	....	1.50	1.55	1.40	....	....	....
43 to 43.9	1.80	1.80	....	....	1.55	1.60	1.45	....	....	....
44 and above	1.85	1.85	....	....	1.60	1.65	1.50	....	....	....

CALIFORNIA—						
150 vis., 2½-3 color	.10½	.10½	.10½	.10½	.10½	.10½
200 vis., 2½-3 color	.11½	.11¾	.11½	.11¾	.11½	.11¾
300 vis., 3-3½ color	.13	.13½	.13	.13½	.13	.13½
350 vis., 3½-4 color	.13½	.13¾	.13½	.13¾	.13½	.13¾
400 vis., 3½-4 color	.15	.15½	.15	.15½	.15	.15½
Red Neutral:						
200 vis., 4½-5 color	.11	.11¼	.11	.11¼	.11	.11¼
300 vis., 5-6 color	.12	.12¼	.12	.12¼	.12	.12¼
400 vis., 5-6 color	.13½	.14	.13½	.14	.13½	.14
500 vis., 4½-5 color	.14¼	.15½	.14¼	.15½	.15¼	.15½
500 vis., 5-6½ color	.15	.15½	.15	.15½	.15	.15½
600 vis., 6½ plus color	.16	.16½	.16	.16¾	.16	.16¾

Note—Bright stocks are not manufactured commercially on the Pacific Coast.

NEW YORK (BAYONNE) REFINERY PRICES

	June 11		June 4		May 28	
Gasoline, U. S. Motor, 58-60,437	.10		.10		.10	
Kerosene, water white, 41-43	.08		.08		.08	
*Fuel Oil, Bunker "C," 14-16, per bbl.	1.05		1.05		1.05	
†Fuel Oil, Diesel 28-30, per bbl.	2.00		2.00		2.00	
Gas Oil, 32-36 gravity	.05	.05½	.05	.05½	.05	.05½
25 pale Paraffin Oil	.10½		.10½		.10½	
28 pale Paraffin Oil	.07½		.07½		.07½	
285 red Paraffin Oil	.11½		.11½		.11½	
250 red Paraffin Oil	.11		.11		.11	
225 red Paraffin Oil	.09½		.09½		.09½	
200 red Paraffin Oil	.09		.09		.09	
Refined Wax:						
120-122 a.m.p., per lb.	.03½		.03½		.03½	
125-127 a.m.p., per lb	.04½		.04½		.04½	
130-132 a.m.p., per lb.	.04½		.04½		.04½	
133-135 a.m.p., per lb.	.06½		.06½		.06½	
135-137 a.m.p., per lb.	.06½		.06½		.06½	
Petrolatum in barrels, carload lots, per pound:						
Dark green	.02		.02		.02	
Amber	.03½		.03½		.03½	
Extra amber	.03¾		.03¾		.03¾	
Cream	.06½		.06½		.06½	
Lily white	.07½		.07½		.07½	
Snow white	.08½		.06½		.08½	

*Lighterage 5.0 cents a barrel extra. †Lighterage 6.5 cents a barrel extra.

NEW YORK (BAYONNE) EXPORT PRICES

	June 11		June 4		May 28	
Kerosene, prime white	.08		.08		.08	
Kerosene, water white	.09		.09		.09	
600, steam refined cylinder stocks, in bbls.	.42	.43	.43	.44	.43	.44
635, steam refined	.44	.45	.45	.46	.45	.46
650, steam refined	.49	.50	.50	.51	.50	.51
900, Pennsylvania Flash	.52	.53	.53	.54	.53	.54
630, Pennsylvania Flash	.57	.58	.58	.59	.58	.59
600, Warren E	.44	.45	.45	.46	.45	.46
600, Oil City E	.44	.45	.44	.45	.44	.45
Light 140-150 Bright Stocks	.61	.66	.63	.68	.63	.68
Dark 140-150 Bright Stocks	.60	.64	.61	.66	.61	.66

LOS ANGELES EXPORT PRICES

	June 11		June 4		May 28	
Kerosene, water white	.05½	.06	.05½	.06	.05½	.06
U. S. Motor Gasoline, 53-55, 437 e.p.	.07	.07½	.07	.07½	.07	.07½

CRUDE OIL PRICES

OKLAHOMA, KANSAS, NORTH AND EAST CENTRAL TEXAS

Corsicana heavy (January 11)* ..... .80
Other fields ..... See gravity table

*Posted by Magnolia Petroleum Co.

TEXAS PANHANDLE

Gray County, Wheeler County and Carson-Hutchinson Counties—See gravity table.

WEST TEXAS

Iatan* ..... Same as North Texas
Crane-Upton-Crockett, Pecos, Winkler, Mitchell, and Glasscock (See gravity table).
Chalk† ..... .66

*Includes Howard County and Westbrook Fields.
†Posted by Humble Oil & Refining Co.

ARKANSAS-NORTH LOUISIANA

Smackover, below 24 gravity (May 20, 1929) ..... $ .65
Smackover, 24 gravity and above (May 20, 1929) 1.00
Cotton Valley (Below 36 gravity May 22) ..... .65
Bellevue (May 20, 1929) 1.10
Urania (May 21, 1929) 1.10
East El Dorado (May 22, 1929) ..... .65
Other fields ..... See gravity table

Cotton Valley crude above 36 gravity takes same gravity price schedule as shown for North Louisiana and Arkansas crude in Mid-Continent gravity price table.

Note—Smackover, Cotton Valley and Bellevue posted by Standard Oil Co. of Louisiana, and Magnolia Petroleum Co.; Urania posted by Louisiana Oil Refining Corp.; East El Dorado, Magnolia Petroleum Co.

GULF COAST

Grade A (May 20)* $1.30
Grade B ..... See gravity table
Jennings, La. (March 14)† $1.05
Saratoga, Batson, Dayton (March 14, 1927)‡ 1.30
Markham (March 14)‡ 1.00
High Island (December 14)‡ 1.00

*Humble Oil & Refining Co., The Texas Company, Gulf Pipe Line Co., and Sun Pipe Line Co. †Gulf Pipe Line Co. ‡Sun Pipe Line Co. §The Texas Company.
¶Posted by Gulf Pipe Line Co.

ROCKY MOUNTAIN STATES
Ohio Oil Co.-Midwest Refining Co.
(Effective May 21, 1929)

Rock Creek, Wyo.	$1.40
Salt Creek	See gravity table
Big Muddy	1.42
Grass Creek, heavy (July 27, 1928)	.90
Grass Creek, light	1.65
Mule Creek	1.30
Elk Basin	1.65
Lance Creek	1.65
Poison Spider (March 14, 1927)	1.00
Notches (March 14, 1927)	.65
Rex Lake (February 22)	1.10
Osage	1.65
Lost Soldier (contract, May 22)	1.05
Hamilton Dome (March 14, 1927)	.85
Greybull	1.65
Cat Creek (Montana) (July 27, 1928)	1.45
Sunburst (Montana) (May 23, 1929)	1.75
Torchlight	1.65
Hogback (New Mexico) (July 27, 1928)	1.70

Note—Salt Creek, Osage, Cat Creek, Greybull and Hogback posted by Midwest Refining Co., and the remainder by the Ohio Oil Co. Both companies post Grass Creek light and Elk Basin.

SOUTH CENTRAL AND SOUTH-WESTERN TEXAS

Luling (May 2)*	$ .90
Mirando (May 20, 1929)†	.90
Salt Flat (May 20, 1929)‡	1.25
Rockdale-Minerva (April 15):	
Below 28 gravity	1.25
28-38.9 gravity	1.27
39-39.9 gravity	1.29
40 and above	1.31
Thrall‡	...

(Continued on Page 142)

CRUDE OIL GRAVITY TABLE

Gravity—	Okla., Kans. N. C. Tex.	No. La. and Arkansas	Crane, Upton, Crockett, Winkler, Howard, Pecos, Texas crudes, and Lea, N. Mex.	Hogboom, Ark.	Wheeler (Texas Panhandle)	Gray County (Texas Panhandle)	Carson and Hutchinson (Texas Panhandle)	Salt Creek, Wyo.	Grade B & Light Crude (S. Coast)	Somerset (South Central Texas)
	1	2	3	4	5	6	7	8	9	10
24 and above	....	....	....	....	....	....	....	....	....	....
Below 24	....	....	....	....	....	....	....	....	....	....
Below 25	.85	....	.70	....	....	....	....	....	1.16	....
25 to 25.9	.90	....	.74	....	....	....	....	....	1.16	....
26 to 26.9	.94	....	.78	....	....	....	....	....	1.21	....
27 to 27.9	1.00	....	.82	....	....	....	....	....	1.24	....
Below 28	....	1.00	....	.90	.90	.90	.90	....	....	....
28 to 28.9	1.05	1.05	.86	.94	.90	.90	.90	....	1.27	....
29 to 29.9	1.10	1.10	.90	.98	.90	.95	.90	1.10	1.30	....
30 to 30.9	1.15	1.15	.94	1.02	.95	1.00	.90	1.15	1.33	....
31 to 31.9	1.20	1.20	.98	1.06	1.00	1.05	.90	1.20	1.36	....
32 to 32.9	1.25	1.25	1.02	1.10	1.05	1.10	.95	1.25	1.39	1.05
33 to 33.9	1.30	1.30	1.06	....	1.10	1.15	1.00	1.30	1.43	1.07
34 to 34.9	1.35	1.35	1.10	....	1.15	1.20	1.05	1.35	1.45	1.09
35 to 35.9	1.40	1.40	1.14	....	1.20	1.25	1.10	1.40	1.48	1.11
36 to 36.9	1.45	1.45	1.18	....	1.25	1.30	1.15	1.45	....	1.13
37 to 37.9	1.50	1.50	....	....	1.30	1.35	1.20	1.50	....	1.15
38 to 38.9	1.55	1.55	....	....	1.35	1.40	1.25	....	....	1.17
39 to 39.9	1.60	1.60	....	....	1.40	1.45	1.30	....	....	....
40 to 40.9	1.65	1.65	....	....	1.45	1.50	1.35	....	....	....
41 to 41.9	1.70	1.70	....	....	1.50	1.55	1.40	....	....	....
42 to 42.9	1.75	1.75	....	....	1.55	1.60	1.45	....	....	....
43 to 43.9	1.80	1.80	....	....	1.60	1.65	1.50	....	....	....
44 and above	1.85	1.85	....	....	1.65	1.70	1.55	....	....	....

Column 1, Note—Magnolia Petroleum Co. posted schedule May 20, 1929, making price below 36 gravity 70 cents per barrel, 36-36.9 gravity 75 cents, 37-37.9 gravity 85 cents, 38-38.9 gravity 90 cents, 39-39.9 gravity 95 cents, 40-40.9 gravity $1.05, and $1.51.9 gravity $1.15, with balance of the price schedule as shown above.

Oklahoma—Carter Oil Co., Prairie Oil & Gas Co., Sinclair Oil & Gas Co., Gypsy Oil Co., The Texas Company, May 20.

North Central Texas—Including Ranger, Mexia, Powell, Richland Wortham, Lytton Springs, Currie, Nocona and Moran, Prairie Oil & Gas Co., Sinclair Oil Refining Co., Humble Oil & Refining Co., The Texas Company and Gulf Refining Co., May 20.

Kansas—Prairie, Sinclair, The Texas Company and Carter, May 20.

Column 2—Arkansas and North Louisiana—(Caddo, Bull Bayou, Crichton, Cotton Valley, above 36 gravity, DeSoto, Haynesville, Homer and El Dorado only), May 26, Standard Oil Co. of Louisiana, Louisiana Oil Refining Corp., Gulf Refining Co., Magnolia Petroleum Co., schedule applies to Pine Island, Haynesville, Bull Bayou, Louisiana and Dorado, Ark., light crude.

Column 3—Humble Oil & Refining Co. and Magnolia Petroleum Co., May 20.

Column 4—Atlantic Oil Producing Co., Louisiana Oil & Refining Corp., May 21, 1929.

Columns 5, 6 and 7—Humble Oil & Refining Co., Magnolia Petroleum Co., May 20, 1929.

Column 8—Midwest Refining Co., May 20, 1929. All crude over 37 gravity $1.80 per barrel.

Column 9—Humble Oil & Refining Co., May 20, 1929 (schedule ends 35 and above).

Column 10—Grayburg Pipe Line Co. and Pioneer Oil & Refining Co., April 7.

CALIFORNIA CRUDE OIL PRICES

Standard Oil Co.-Union Oil Co. (Effective January 18, 1929)

Gravity—	Salt Lake, Potrero, Newport, Long Beach, Summerland, Lawndale Richfield, Torrance, Olinda-Brea, Alamitos Heights, Signal Hill, Seal Beach, Huntington Beach, Athens, Inglewood, Rosecrans-Dominguez, Watsonville	Whittier, La Habra, Coyote Hills	Midway-Sunset, Elk Hills, Lost Hills, Delridge, Buena Vista Hills	Montebello	Santa Fe Springs	Santa Maria, Casmalia	Wheeler Ridge, Fruitvale	Orcutt, Ventura, Rincon	Ventura Ave.	Elwood Terrace
	1	2	3	4	5	6	7	8	9	10
14 to 14.9	.70	.70	.50	.70	....	.50	.50	.65	.70	....
15 to 15.9	.70	.70	.50	.70	....	.50	.50	.65	.70	....
16 to 16.9	.70	.70	.50	.70	....	.50	.50	.65	.70	....
17 to 17.9	.70	.70	.50	.70	....	.50	.50	.65	.70	....
18 to 18.9	.75	.75	.56	.70	....	.56	.56	.70	.75	....
19 to 19.9	.80	.80	.62	.75	....	.62	.62	.70	.80	....
20 to 20.9	.85	.85	.68	.80	....	.68	.68	.70	.85	....
21 to 21.9	.89	.89	.74	.85	.85	.74	.74	.80	.89	....
22 to 22.9	.93	.91	.80	.90	.92	.80	.80	.87	.97	....
23 to 23.9	.97	.94	.85	.95	.98	.85	.85	.90	.98	....
24 to 24.9	1.01	.97	.90	.98	.98	.88	.88	.94	.94	....
25 to 25.9	1.05	1.00	.95	1.01	1.01	.91	.91	.98	.98	....
26 to 26.9	1.09	1.04	1.00	1.04	1.04	.94	.94	1.02	1.02	....
27 to 27.9	1.13	1.08	1.05	1.07	1.07	.98	.97	....	1.06	....
28 to 28.9	1.17	1.12	1.10	1.10	1.10	1.02	....	....	1.12	....
29 to 29.9	1.21	1.16	1.15	1.13	1.15	1.06	....	....	1.14	....
30 to 30.9	1.25	1.20	1.22	1.16	1.20	1.10	....	....	1.18	....
31 to 31.9	1.30	....	1.28	....	1.26	1.14	....	....	1.22	....
32 to 32.9	1.35	....	1.34	....	1.30	1.18	....	....	1.28	....
33 to 33.9	1.41	....	1.40	....	1.35	1.22	....	....	1.34	....
34 to 34.9	1.47	....	1.46	....	1.40	1.26	....	....	1.40	1.16
35 to 35.9	1.53	....	....	....	1.45	1.30	....	....	1.46	1.22
36 to 36.9	1.59	....	....	....	1.50	....	....	....	1.52	1.28
37 to 37.9	1.65	....	....	....	1.55	....	....	....	1.58	1.34
38 to 38.9	1.71	....	....	....	1.60	....	....	....	1.64	1.40
39 to 39.9	1.77	....	....	....	1.65	....	....	....	1.70	1.46
40 to 40.9	1.83	....	....	....	....	....	....	....	1.76	1.52
41 to 41.9	1.89	....	....	....	....	....	....	....	1.82	1.58
42 to 42.9	1.95	....	....	....	....	....	....	....	1.88	1.64

Kern River, Newhall-McKittrick, Mount Poso and Round Mountain .1 to 13.9 gravity 45 cents, 14 gravity and above 50 cents, effective October 2, 1929. On December 1, 1928, the Union Oil Co. posted Midway-Sunset, Elk Hills, Buena Vista, Lost Hills and Coalinga crude as follows: 11 to 13.9 gravity at 45 cents, 14 gravity and above at 50 cents.

Column 1—Signal Hill, Seal Beach, Huntington Beach and Alamitos Heights crude, 14 to 32.9 gravity, inclusive; Richfield, Olinda-Brea and Fullerton, 14 to 29.9 gravity; Torrance and Inglewood, 14 to 28.9 gravity, Domingues and Athens-Rosecrans, 24 to 42.9 gravity.

Column 2—Whittier crude, 14 to 22.9 gravity; Coyote Hills, 14 to 30.9 gravity.

Column 3—Kern River, Newhall and McKittrick, 11 to 13.9 gravity; Midway-Sunset, Buena Vista and Elk Hills, 11 to 13.9 gravity; Lost Hills, 11 to 24.9 gravity; oil below 14 gravity posted at 45 cents.

Column 6—Oil below 14 gravity posted at 45 cents.

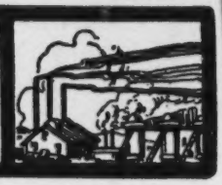
Columns 8 and 9 posted by Union Oil Co. only.

RESPONDENTS EXHIBIT makred "CONWAY - 10" being pages 138 and 139
from OIL AND GAS JOURNAL OF DATE MARCH 17, 1927. filed JUN 27, 1929.



REFINERY AND CRUDE PRICES

Quotations on Principal Refined Products and Crude Petroleum Markets in All the American Oil Fields



GASOLINE AND NAPHTHA

	Mar. 15		Mar. 8		Mar. 1	
OKLAHOMA (Group 3)—						
50-52 450 end point (Naphtha)	.06¾		.07¼	.07½	.07¾	.08
56-58 450 end point	.06½	.06¾	.07		.07¾	.08
58-60 450 end point	.06½	.06¾	.07	.07¼	.07½	
58-60 450 end point	.06½	.06¾	.07	.07¼	.07½	
58-60 437 end point (U. S. Motor)	.06¾	.07	.07¼	.07½	.07½	.08
60-62 400 end point	.07¼	.07¾	.08	.08¼	.08¼	.08½
64-66 375 end point	.08¼	.08½	.08¾	.09	.09	.09¼
68-70 360 end point	.08¾	.09	.09½	.09¾	.09⅞	.10⅛
64-66 437 end point (blend)	.06½	.07	.07¼	.07½	.07½	.08
KANSAS—						
58-60 437 end point (U. S. Motor)	.07	.07¼	.07½	.07¾	.08	
NORTH TEXAS—						
48-50 450 end point (Naphtha)	.06½	.06¾	.07	.07¼	.07½	.07⅝
56-58 450 end point	.06¾	.07	.07	.07¼	.07½	.07⅝
58-60 437 end point (U. S. Motor)	.06¾	.07	.07⅛	.07⅝	.07⅝	.07¾
60-62 400 end point	.07½	.07¾	.08	.08¼	.08¼	.08½
64-66 390 end point	.08	.08¼	.08½	.08⅝	.08¾	.09
64-66 375 end point	.08¼	.08½	.08⅝	.09	.09	.09¼
68-70 360 end point	.08¾	.09	.09½		.10	.10¼
64-66 437 end point (blend)	.06½	.06⅜	.07¼	.07½	.07½	.07⅝
NORTH LOUISIANA—						
58-60 437 end point (U. S. Motor)	.07	.07¼	.07½	.07¾	.08	.08¼
ARKANSAS—						
58-60 437 end point (U. S. Motor)	.07	.07¼	.07½	.07¾	.08	.08¼
PENNSYLVANIA—						
52-54 Naphtha	.10¼	.10½	.11	.11¼	.11½	.11¾
54-56 Naphtha	.10½	.10⅝	.11	.11½	.11½	.11¾
58-60 Gasoline	.10½	.10¾	.11¼	.11½	.11½	.11¾
60 Gasoline	.11¼	.11½	.12¼	.12½	.12½	.12¾
62 Gasoline	.11½	.11¾	.12⅜	.13	.13	.13¼
64 Gasoline	.12	.12¼	.13	.13¼	.13¼	.13½
66 Gasoline	.17	.17¼	.17	.17¼	.16½	.17
68-70 Gasoline	.17¼	.17½	.17¼	.17½	.17½	.18
CALIFORNIA—						
58-60 437 end point (U. S. Motor) domestic	.10	.10½	.10½	.11	.10½	.11
CHICAGO DISTRICT (Based on Group 3)—						
50-52 450 end point (Naphtha)	.07	.07¼	.07½		.08	
56-58 450 end point	.06¾		.07	.07½	.07¾	
58-60 437 end point (U. S. Motor)	.06¾	.07	.07¼	.07½	.07½	.08
60-62 400 end point	.07¾	.08	.08	.08¼	.08¼	.08½
64-66 375 end point	.08¼	.08½	.08¾	.09	.09⅛	.09½
68-70 360 end point	.08¾	.09	.09½	.09¾	.10	.10½
64-66 437 end point (blend)	.06½	.07	.07¼	.07½	.07¾	.08

NATURAL GASOLINE

	Mar. 15		Mar. 8		Mar. 1	
OKLAHOMA (Group 3)—						
Grade AA, 80-87.9, 375 e.p., rec. 90%	.04¾		.05¼	.05½	.06	.06¼
Grade A, 72-79, 375 e.p., rec. 90%	.05¼	.05½	.06¼		.06½	.06⅝
Grade BB, 84-92, 375 e.p., rec. 85%	.04		.04¾	.05	.05¼	
Grade B, 76-83.9, 375 e.p., rec 85%	.04½		.05		.05¾	
Grade C, 80-90, 375 e.p., rec. 78%	.03¾	.04	.04¼		.04¾	.05
NORTH TEXAS—						
Grade AA, 80-87.9, 375 e.p., rec. 90%	.04¾		.05¼	.05½	.06¼	
Grade A, 72-79.9, 375 e.p., rec. 90%	.05¼	.05½	.06¼		.06½	.06¾
Grade BB, 84-92, 375 e.p., rec. 85%	.04	.04¼	.04¾	.05	.05¼	.05⅝
Grade B, 76-83.9, 375 e.p., rec. 85%	.04½		.05	.05¼	.05¾	.06
Grade C, 80-90, 375 e.p., rec. 78%	.04		.04¼	.04½	.05	.05⅛
NORTH LOUISIANA—						
Grade A, 72-79.9, 375 e.p., rec. 90%	.06	.06½	.06½	.06¾	.07	.07¼
Grade B, 76-83.9, 375 e.p., rec. 85%	.05½	.05¾	.05¾	.06	.06⅜	.06⅝
Grade C, 80-90, 375 e.p., rec. 78%	.05	.05¼	.05½	.05¾	.06	.06¼
CALIFORNIA—						
75-86, 375-390 end point	.11½	.13	.12½	.13½	.12½	.13½
CHICAGO DISTRICT (Based on Group 3)—						
Grade AA, 80-87.9, 375 e.p., rec. 90%	.04¾	.05	.05½	.05⅝	.06¼	.06½
Grade A, 72-79.9, 375 e.p., rec. 90%	.05¼	.05½	.06¼	.06½	.06½	.06¾
Grade BB, 84-92, 375 e.p., rec. 85%	.04¼	.04½	.05	.05¼	.05¼	.05½
Grade B, 76-83.9, 375 e.p., rec. 85%		.04½	.05¼	.05½	.05¾	.06
Grade C, 80-90, 375 e.p., rec. 78%		.04	.04½	.05	.05	

BURNING OIL

	Mar. 15		Mar. 8		Mar. 1	
KANSAS—						
41-43 water white Kerosene	.06	.06¼	.06⅜	.06⅝	.06¼	.06⅝
OKLAHOMA (Group 3)—						
41-43 water white Kerosene	.05¼	.05½	.05¾		.05¾	.06
42-44 water white Kerosene	.05¾	.06	.06¼	.06½	.06⅜	.06½
NORTH LOUISIANA—						
41-43 prime white Kerosene	.05¾		.06	.06⅛	.06¼	
NORTH TEXAS—						
41-43 water white Kerosene	.05	.05¼	.05½	.05¾	.05¾	.06
ARKANSAS—						
41-43 water white Kerosene	.05¾		.06	.06¼	.06¼	.06½
PENNSYLVANIA—						
43 Kerosene prime white	.06¾	.07	.07	.07¼	.07⅜	.07½
45 Kerosene water white	.07	.07¼	.07¼	.07½	.07½	.07¾
46 Kerosene water white	.07¾	.08	.08	.08¼	.08¼	.08½
47 Kerosene water white	.08¼	.08½	.08½	.08⅝	.08¾	.09
300 Mineral Seal	.08½	.08⅝	.08½	.08¾	.08½	.08¾
CALIFORNIA—						
38-40 water white (high burning test)	.07	.07½	.07	.07½	.07	.07½
Engine distillate, 43-45, 445 end point	.07¼	.07¾	.07¾	.08	.07¾	.08
Engine distillate, 42-44, 480 end point	.07	.07½	.07¼	.07½	.07¼	.07½
CHICAGO DISTRICT (Based on Group 3)—						
41-43 water white Kerosene	.05½		.06	.06⅛	.06	.06¼
42-44 water white Kerosene	.06	.06¼	.06½		.06½	

FUEL OILS

	Mar. 15		Mar. 8		Mar. 1	
KANSAS—						
24-26 Fuel Oil	1.40	1.45	1.45	1.50	1.45	1.50
32-36 Gas Oil	.04	.04¼	.04¼	.04½	.04¼	.04½
38-40 Distillate	.04¾	.05		.05¼	.05	.05¼
*OKLAHOMA (Group 3)—						
Fuel Oil (sellers' cars)	1.12½			.20	1.15	1.20
Oil (sellers' cars)	1.1[illegible]			.25	1.22½	1.25
Oil (sellers' cars)	1.2			.30	1.25	1.30
26-30 Fuel oil (sellers' cars)	1.27½	1.30	1.30	1.35	1.30	1.35
28-30 Fuel Oil (sellers' cars)	1.40	1.45	1.45	1.50	1.45	1.50
32-36 Gas Oil (dark)		.03¾	.04	.04¼	.04½	.04¼
32-36 Gas Oil (straw overhead)	.03¾	.04	.04¼	.04⅜	.04¼	.04½
36-38 Distillate	.04	.04¼	.04¼	.04½	.04½	
38-40 Straw Distillate	.04¼	.04⅜	.04⅜	.04½	.04½	.04⅝
NORTH TEXAS—						
24-26 Fuel Oil (sellers' cars)	1.50	1.55	1.55		1.55	1.57½
32-36 Gas Oil (straw)	.03¾	.04	.03⅞	.04	.04⅛	.04⅜
38-40 Straw Distillate	.04¼		.04¼	.04⅜	.04½	
NORTH LOUISIANA—						
18-20 Fuel Oil	1.25		1.25	1.30	1.30	1.35
32-36 Gas Oil	.03¾	.04	.04¼	.04½	.04¼	.04½
ARKANSAS—						
36-38 Distillate	.04¼	.04⅜	.04⅜	.04½	.04½	.04⅝
32-36 Gas Oil (straw)	.04¼	.04¼	.04¼	.04¼	.04¼	.04½
16-20 Refinery Fuel Oil	1.20	1.22½	1.22½	1.25	1.25	1.30
GULF COAST (South Texas)—						
Gas Oil	.05⅛	.05¼	.05½	.05⅝	.05½	.05⅝
Fuel Oil	1.60	1.65	1.75		1.75	1.85
PENNSYLVANIA—						
30-34 Fuel Oil	.05¾	.06	.05⅞	.06	.06	.06¼
36-40 Fuel Oil	.06¼	.06¾	.06¼	.06⅜	.06¼	.06½
CALIFORNIA—						
36-36 Distillate	.04	.04¾	.04	.04¾	.04	.04¾
27-32 Distillate	.03½	.04	.03½	.04	.03½	.04
*15-20 Fuel Oil, Bunkers (at tide water)	.92½	1.04	.92½	1.04	.92½	1.04
15-20 Fuel Oil (cargo lots)	.79	.87½	.82½	.87½	.82½	.87½
27 plus Diesel	1.15	1.19	1.15	1.19	1.15	1.19
CHICAGO DISTRICT (Based on Group 3)—						
24-26 Fuel Oil (sellers' cars) Group 3	1.25		1.25	1.30	1.25	1.30
22-26 Fuel Oil (sellers' cars) Group 3	1.20	1.22½	1.20	1.25	1.20	1.25
18-22 (Group 3)	1.17½	1.20	1.20		1.20	
16-20 (Smackover)	1.25		1.25	1.30	1.25	1.30
32-36 Gas Oil (zero)	.04	.04½	.04¼	.04⅝	.04¼	.04⅝
32-36 Gas Oil (industrial)	.03¾	.04	.04	.04¼	.04⅛	.04⅜
36-38 Distillate	.04	.04¼	.04¼	.04½	.04½	.04⅝
38-40 Straw Distillate	.04¼	.04½	.04½	.04¾	.04¾	.04⅞

*Bunkers.

LUBRICATING OIL AND WAX

	Mar. 15		Mar. 8		Mar. 1	
OKLAHOMA (Group 3)—						
100 vis., 2 color, 20-25 cold test	.06¾	.07	.06¾	.07	.06	.06¼
100 vis., 3 color, 20-25 cold test	.06½	.07	.06½	.07	.06	.06½
150 vis., 3 color, 20-25 cold test	.08½	.09	.09½	.10	.08¼	.08½
150 vis., 4 color, 20-25 cold test	.08¼	.08¾	.09½	.09¾	.08	.08½
180 vis., 3 color, 23-28 cold test	.09½	.10	.10	.11	.09½	.10
180 vis., 4 color, 23-28 cold test	.09¾	.10	.10	.10½	.09½	.09¾
180 vis., 5 color, 23-28 cold test	.09½	.10	.09¾	.10¼	.09¼	.09½
200 vis., 3 color, 23-28 cold test	.10½	.11	.10¾	.11¾	.10¾	.11
200 vis., 4 color, 23-28 cold test	.10¼	.10¾	.11	.11½	.10½	.10¾
200 vis., 5 color, 23-28 cold test	.10½	.11	.10½	.11¼	.10¼	.10½
240 vis., 3 color, 25-30 cold test	.13½	.14	.14	.15	.13¾	.14
240 vis., 4 color, 25-30 cold test	.13½	.14	.14	.14½	.13½	.13¾
240 vis., 5 color, 25-30 cold test	.12½	.13	.13	.14	.12¾	.13
280 vis., 3 color, 25-30 cold test	.16½	.17	.16	.17	.15¾	.16
280 vis., 4 color, 25-30 cold test	.15¼	.15½	.15½	.16½	.15	.15½
280 vis., 5 color, 25-30 cold test	.14½	.15	.15	.16	.14¼	.14½
Cylinder Stocks:						
600, steam refined, light green	.07½	.10	.08½	.11	.08½	.11
600, steam refined, dark green	.05	.06	.06	.07	.06	.07
190-200 vis. @ 210 Bright Stock	.31	.33	.31	.35	.31	.35
150-160 vis. @ 210 Bright Stock	.26		.27		.27	.31
Waxes:						
124-126 White Crude Scale Wax	.04	.04⅛	.04	.04¼	.04¼	
PENNSYLVANIA—						
34 Neutral	.07¼	.07½	.07½	.07¾	.07½	.07¾
34 Sundebloom Neutral	.08½	.08¾	.08½	.08¾	.08½	.08¾
36 Miners' Neutral	.07¼	.07½	.07¼	.07½	.07¼	.07½
150, 3 color	.28¼	.28½	.28¼	.28½	.28¼	.28½
180, 3 color	.29¼	.30	.29¾	.30	.29¾	.30
200, 3 color	.32½	.32¾	.32½	.32¾	.32½	.32¾
220, 3 color	.34¼	.34½	.34¼	.34½	.34¼	.34½
600, steam refined	.11¼	.11½	.11¼	.11½	.11½	.11¾
635, steam refined	.14¼	.14½	.14¼	.14½	.14¼	.14½
650, steam refined	.15½	.15¾	.15½	.15¾	.15½	.15¾
600, Pennsylvania flash	.19½	.20	.19½	.20	.19½	.20
630, Pennsylvania flash	.29½	.30	.29¾	.30	.30¼	.30½
*550, E filtered	.18¼	.18½	.18¼	.18½	.18½	.19
*600, E filtered	.20	.20¼	.20	.20¼	.20	.20½
600, E filtered	.18¾	.18½	.18	.18½	.18	.18½
600, D filtered	.25¼	.25¾	.25½	.25¾	.25½	.26
550, E filtered	.17½	.18	.17½	.18	.17½	.18
550, D filtered	.21½	.22	.21½	.22	.21½	.22
Pennsylvania Bright Stock	.36	.36½	.37		.37	
122-124 White Crude Scale Wax	.04¼	.04⅜	.04¼	.04⅜	.04½	.04⅜
†124-126 White Crude Scale Wax	.04⅜	.04½	.04⅜	.04½	.04½	.04⅝

*At Warren, Pa. †At New York City.

GULF COAST (South Texas)—						
No. 2 color, 100 vis., pale oil	.08	.08½	.08	.09	.08	.09
No. 3 color, 200 vis., pale oil	.11	.11½	.11	.12	.11	.12
No. 3 color, 300 vis., pale oil	.12	.12½	.12	.13	.12	.13
No. 3½ color, 500 vis., pale oil	.14	.14½	.14	.15	.14	.15
No. 4 color, 750 vis., pale oil	.16	.16½	.16	.17	.16	.17
No. 5 to 6 color, 200 vis., red oil	.09	.09½	.09	.10	.09	.10
No. 5 to 6 color, 300 vis., red oil	.10½	.11	.11	.12	.11	.12
No. 5 to 6 color, 500 vis., red oil	.12	.12½	.12	.13	.12	.13
No. 5 to 6 color, 750 vis., red oil	.15	.15½	.15	.16	.15	.16
CALIFORNIA—						
130 vis., 2½-3 color	.10½	.11	.10	.10½	.10	.10½
200 vis., 2½-3 color	.11	.11½	.10½	.11	.10½	.11
300 vis., 3 -3½ color	.11½	.12	.11	.11½	.11	.11½



REFINERY AND CRUDE PRICES

Quotations on Principal Refined Products and Crude Petroleum Markets in All the American Oil Fields



350 vis., 3½-4 color	.12	.13	.11	.11½	.11	.11½
400 vis., 3½-4 color	.13	.13½	.12½	.13	.12½	.13
Red Neutral:						
200 vis., 4½-5 color	.09½	.10½	.09	.09½	09	.09½
300 vis., 5 -6 color	.10½	.11½	.09½	.10	.09½	.10
400 vis., 5 -6 color	.12	.13½	.11½	.12	.11½	.12
500 vis., 4½-5 color	.13½	.14½	.12	.13½	.12	.13½
500 vis., 5 -6½ color	.12½	.13½	.12	.12½	.12	.12½
600 vis., 6½ plus color	.13½	.14½	.12½	.13	.12½	.13

Note: Bright stocks are not manufactured commercially on the Pacific Coast.

NEW YORK (BAYONNE) REFINERY PRICES

	Mar. 15	Mar. 8	Mar. 1
Gasoline, U. S. Motor, 58-60 437	.11	.12	.13
Kerosene, water white, 41-43	.08	.08	.09
*Fuel Oil, bunker "C," 14-16, per bbl.	1.75	1.75	1.75
*Fuel Oil, Diesel, 28-30, per bbl.	2.50	2.40	2.40
Gas Oil, 28 plus	.06¼	.06¼	.06¼
25 pale Paraffin Oil	.13	.13	.13
28 pale Paraffin Oil	.08	.08	.08
285 red Paraffin Oil	.13½	.13½	.13½
250 red Paraffin Oil	.12½	.12½	.12½
225 red Paraffin Oil	.11	.11	.11
200 red Paraffin Oil	.10	.10	.10
Refined Wax:			
120-122 a.m.p., per lb.	.05½	.05½	.05½
125-127 a.m.p., per lb.	.05⅝	.05⅝	.05⅝
130-132 a.m.p., per lb.	.06	.06	.06
135-137 a.m.p., per lb.	.06⅜	.06⅜	.06⅜
Petrolatum, in bbls.; carload lots, per lb.:			
Dark green	.02	.02	.02
Amber	.03⅜	.03⅜	.03⅜
Extra amber	.03¾	.03¾	.03¾
Cream	.05½	.05½	.05½
Lily white	.07½	.07½	.07½
Snow white	.08½	.08½	.08½

*Lighterage 5.5c a barrel extra.

NEW YORK (BAYONNE) EXPORT PRICES

	Mar. 15	Mar. 8	Mar. 1
Gasoline, U. S. Motor, 58-60 437, in cases	.2565	.2565	.2665
Kerosene, standard white, in cases	.1765	.1815	.1865
Kerosene, water white, in cases	.1865	.1965	.2015
600 steam refined cylinder stock, in bbls.	.20	.20	.20
635 steam refined	.22	.22	.22
650 steam refined	.23½	.23½	.23½
600 Pennsylvania flash	.28	.28	.28
630 Pennsylvania flash	.35	.35	.35
600 Warren E	.27	.27	.27
600 Oil City E	.25	.25	.25
Light 135	.46	.46	.46
Dark 135	.44	.44	.44

LOS ANGELES EXPORT PRICES

	Mar. 15	Mar. 8	Mar. 1
Kerosene water white	.05¾ .06½	.05¼ .05¾	.05¼ .05¾
U. S. Motor Gasoline, 53-55 437 e.p.	.08½ .09	.08½ .09¼	.08½ .09¼

CRUDE OIL PRICES

OKLAHOMA, KANSAS, NORTH AND EAST CENTRAL TEXAS

*Corsicana heavy (March 14, 1927).....$1.00
Other fields .....See gravity table

*Posted by Magnolia Petroleum Co.

TEXAS PANHANDLE

*Carson County .....$ .95
*Hutchinson County 95
Gray-Wheeler Counties..See gravity table

*Humble Oil & Refining Co., Magnolia Petroleum Co., Gulf Pipe Line Co. and Kay County Gas Co., March 14.

WEST TEXAS

*Iatan (Same as North Texas)
Crane-Upton-Crockett .....See gravity table

*Includes Howard County and Westbrook Fields. Kay County Gas Co. pays $1.16 for Howard County crude, effective March 12.

ARKANSAS-NORTH LOUISIANA

Cotton Valley (Feb. 24, 1927).....$1.10
Bellevue (Feb. 24, 1927)..... 1.00
Urania (August 26, 1926) 1.10
Calion (May 18, 1926) 1.10
Other fields .....See gravity table

Note—Cotton Valley and Bellevue, Standard Oil Co. of Louisiana, Gulf Refining Co. and Magnolia Petroleum Co.; Urania, Louisiana Oil Refining Corp.; Calion (East El Dorado), Gulf Refining Co.

GULF COAST

(Goose Creek, Hull, Liberty, West Columbia, Orange, Boling, Sour Lake, Humble, High Island, Pierce Junction and Spindletop.)

‡Grade A (March 14) $1.20
Grade B .....See gravity table
*Jennings, La. (October 29, 1926)..... 1.15
†Saratoga, Batson, Dayton (March 8, 1927) 1.20
**Magnham 1.15

*Gulf Pipe Line Co. †Sun Pipe Line Co. ‡Humble Oil & Refining Co. and other major buyers. **The Texas Company.

SOUTH CENTRAL AND SOUTHWESTERN TEXAS

*Luling (March 14) $1.05
†Mirando (March 14) 1.00
Rockdale-Minerva (Milam County)... 1.35
*Thrall .....
Callihan (May 15) 1.75
Lytton Springs (Lockhart) See gravity table
Somerset .....See gravity table

*Posted by Magnolia Petroleum Co. Thrall prices same as north central Texas less 19¼ cents per cwt. freight.
†Magnolia Petroleum Co., Humble Oil & Refining Co.

ROCKY MOUNTAIN STATES
Ohio Oil Co.-Midwest Refining Co.
(Effective March 14)

Rock Creek, Wyo. $1.25
Salt Creek .....See gravity table
Big Muddy 1.25
Mule Creek (February 23) 1.30
Grass Creek light 1.33
Grass Creek, heavy ..... .68
Elk Basin 1.33
Lance Creek 1.33
Poison Spider 1.00
Notches ..... .65
Rex Lake (February 23) 1.10
Osage 1.33
Lost Soldier (contract) (May 17)..... 1.60
Greybull-Torchlight 1.33
Hamilton Dome 1.35
Cat Creek (Mont.) 1.33
Sunburst (Mont.) (October 5) 1.35
Artesia (March 12) 1.00
Hogback (N. Mex.) 1.75

Note: Salt Creek, Osage, Cat Creek, Greybull and Hogback posted by Midwest Refining Co., and the remainder by the Ohio Oil Co. Both companies post Grass Creek light and Elk Basin.

EASTERN STATES
Joseph Seep Purchasing Agency
(Effective March 7)

Penna Grade Oil in New York Transit Line (New York).....$2.15
Bradford District Oil in National Transit Lines (Pennsylvania) 2.15
Penna Grade Oil in National Transit Lines (Pennsylvania)..... 2.05
Penna Grade Oil in Southwest Pennsylvania Lines (West Virginia) 2.05
Penna Grade Oil in Eureka Pipe Line lines (Pennsylvania) 2.00

(Continued on Page 140)

CRUDE OIL GRAVITY PRICE TABLE

Gravity—	Okla., Kans., N. C. Tex., La.-Ark. 1	Smackover, Ark. 2	Stephens, Ark. 3	Wheeler and Gray Counties (Texas Panhandle) 4	Crane, Upton Crockett Counties (West Texas) 5	Salt Creek, Wyo. 6	Grade B & Light Crude (G. Coast) 7	Somerset (South Central Texas) 8
Below 24	....	1.10	....	....	....	....	....	....
24 to 24.9	....	1.25	....	....	....	....	....	....
Below 25	....	....	....	....	....	....	1.15	....
25 to 25.9	....	1.25	....	....	....	....	1.17	....
Below 26	....	....	....	....	....	....	....	....
26 to 26.9	....	1.25	....	....	.70	....	....	....
27 to 27.9	....	1.25	....	....	.72	....	1.19	....
Below 28	****	....	1.00	....	.74	....	1.21	....
28 to 28.9	1.12	....	1.02	.80	.76	....	1.23	1.32
29 to 29.9	1.14	....	1.04	.82	.78	1.14	1.25	1.36
30 to 30.9	1.16	....	1.06	.84	.80	1.16	1.27	1.39
31 to 31.9	1.18	....	1.08	.86	.82	1.18	1.29	1.32
32 to 32.9	1.20	....	1.10	.88	.84	1.20	1.31	1.35
33 to 33.9	1.22	....	....	.90	.86	1.22	1.33	1.38
34 to 34.9	1.24	....	....	.92	.88	1.24	1.35	1.41
35 to 35.9	1.26	....	....	.94	.90	1.26	1.37	1.44
36 to 36.9	1.28	....	....	.96	.92	1.28	....	1.47
37 to 37.9	1.30	....	....	.98	....	1.30	....	1.50
38 to 38.9	1.32	....	1.00	....	....	....	....	1.53
39 to 39.9	1.34	....	1.02	....	....	....	....	....
40 to 40.9	1.36	....	1.04	....	....	....	....	....
41 to 41.9	1.38	....	1.06	....	....	....	....	....
42 to 42.9	1.40	....	1.08	....	....	....	....	....
43 to 43.9	1.42	....	1.10	....	....	....	....	....
44 to 44.9	1.44	....	1.12	....	....	....	....	....
45 to 45.9	1.46	....	....	....	....	....	....	....
46 to 46.9	1.48	....	....	....	....	....	....	....
47 to 47.9	1.50	....	....	....	....	....	....	....
48 to 48.9	1.52	....	....	....	....	....	....	....
49 to 49.9	1.54	....	....	....	....	....	....	....
50 to 50.9	1.56	....	....	....	....	....	....	....
51 to 51.9	1.58	....	....	....	....	....	....	....
52 and above	1.60	....	....	....	....	....	....	....

Column 1—Oklahoma: Prairie Oil & Gas Co., Sinclair Oil & Gas Co., Gypsy Oil Co., Magnolia Petroleum Co., March 12; Carter Oil Co., The Texas Company, March 14.

North Central Texas—(Including Ranger, Mexia, Powell, Richland, Wortham, Lytton Springs [Southwest Texas], Iatan and Panola [Magnolia only], Currie, Nocona, Moran and Corsicana light): Humble Oil & Refining Co., March 12; Magnolia, Texas, Prairie, Sinclair and Gulf, March 12; The Texas Company, March 14.

Kansas—Prairie, Sinclair, Magnolia, March 12; Carter, Texas, March 14.

Arkansas and North Louisiana—(Caddo, Bull Bayou, Crichton, DeSoto, Haynesville, Homer and El Dorado only): Standard Oil Co. of Louisiana, March 14; The Texas Company, March 14; Magnolia Petroleum Co., Pine Island, Haynesville and Bull Bayou, El Dorado, March 14; El Dorado, March 14; Gulf Production Co., March 14.

Column 2—Standard Oil Co. of Louisiana, The Texas Company, Gulf, Atlantic, February 24, and Magnolia, February 25.

Column 3—Atlantic Oil Producing Co., March 14.

Column 4—Humble Oil & Refining Co. and Gulf Pipe Line Co., March 14.

Column 5—Humble Oil & Refining Co., Kay County Gas Co. and Gulf Pipe Line Co., March 14.

Column 6—Midwest Refining Co., March 12, 1927. All crude over 37 gravity, $1.30 per bbl.

Column 7—Humble Oil & Refining Co. and other major buyers (schedule ends "35 and above"), March 14, 1927.

Column 8—Grayburg Pipe Line Co. and Pioneer Oil & Refining Co., March 7

****Prices for crude below 28 gravity: Oklahoma, Kansas and Texas, Magnolia Petroleum Co., $1.10, March 12, 1927; Arkansas, North Louisiana, March 14. Other companies, 2 cents less for each degree.

CALIFORNIA CRUDE PRICES
***Standard Oil Co.-Union Oil Co. (Effective March 11, 1926)**

Gravity—	Long Beach Huntington Beach Richfield Brea-Olinda Rosecrans-Dom'guez Torrance-Inglewood 1	Whittier La Habra Montebello 2	Kern River Newhall-McKittrick Midway-Sunset Elk Hills Lost Hills Belridge 3	Coyote 4	Santa Fe Springs 5	Coalinga 6	Wheeler Ridge 7	Santa Maria Ventura Salt Lake 8
14°	.85	.85	.75	.85	....	.75	.75	.85
15°	.87	.85	.75	.85	....	.75	.75	.85
16°	.90	.85	.75	.85	....	.75	.75	.85
17°	.94	.85	.75	.85	....	.75	.75	.85
18°	.98	.86	.75	.86	....	.75	.75	.85
19°	1.04	.87	.76	.87	....	.75	.75	.85
20°	1.10	.89	.82	.90	.85	.79	.78	.90
21°	1.16	.91	.90	.92	.91	.84	.81	.97
22°	1.22	.94	1.00	1.06	.94	.93	.85	1.04
23°	1.28	.97	1.11	1.14	.97	1.06	.89	1.11
24°	1.34	1.01	1.22	1.22	1.02	1.07	.93	1.18
25°	1.40	1.05	1.31	1.30	1.08	1.14	.97	1.25
26°	1.46	1.09	1.44	1.38	1.16	1.21	1.01	1.32
27°	1.52	1.13	1.55	1.46	1.24	1.28	1.05	1.39
28°	1.58	1.17	1.66	1.54	1.32	1.36	....	1.46
29°	1.64	1.21	1.77	1.62	1.40	1.42	....	1.53
30°	1.70	1.25	1.88	1.70	1.48	1.49	....	1.60
31°	1.76	....	1.99	....	1.60	1.56	....	1.67
32°	1.84	....	2.10	....	1.72	1.62	....	1.73
33°	1.92	....	2.21	....	1.84	1.70	....	1.79
34°	2.00	....	2.32	....	1.96	1.77	....	1.85
35°	2.08	....	....	....	2.08	1.84	....	1.92
36°	2.16	....	....	....	2.16	....	....	....
37°	2.24	....	....	....	2.24	....	....	....
38°	2.32	....	....	....	2.34	....	....	....
39°	2.44	....	....	....	2.44	....	....	....
40°	2.54	....	....	....	....	....	....	....
41°	2.64	....	....	....	....	....	....	....
42°	2.74	....	....	....	....	....	....	....

*Column 1—Long Beach and Huntington Beach crudes, 14 to 32 degrees, inclusive; Richfield and Brea-Olinda, 14 to 30 degrees; Torrance and Inglewood, 14 to 28 degrees; Domingues, 24 to 42 degrees. Rosecrans crude ranges from 14 to 42 degrees, but only Union Oil Co. posts below 24 degrees.
Column 2—Whittier and La Habra crudes, 14 to 22 degrees; Montebello, 14 to 30 degrees.
Column 4—Kern River, Newhall and McKittrick, 14 to 19 degrees; Midway-Sunset and Elk Hills, 14 to 32 degrees; Lost Hills and Belridge, 14 to 24 degrees.
Column 6—Santa Fe Springs. Only Union Oil Co. posts below 24 degrees.
Column 8—Salt Lake, 14 to 19 degrees, inclusive; Santa Maria, 14 to 30 degrees; Ventura, 14 to 26 degrees. Posted only by Union Oil Co.

[fol. 82] RESPONDENT'S EXHIBIT

Being Pages 12 and 13 from Information Circular, Department of Commerce, Bureau of Mines, Number 6114, Filed Jun. 27, 1929

Intf. Cir. 6114

State, county, field	Average gravity: Degrees A. P. I.	Average gravity: Specific gravity	Production (thousands of barrels): 1926	Production (thousands of barrels): 1927	Posted price per barrel, July 1: 1926	Posted price per barrel, July 1: 1927	Posted price per barrel, July 1: 1928	Per cent gasoline	Per cent sulphur	Type (base of crude)
Louisiana:										
Acadia:										
Jennings	24.3	0.908	342	269	$1.33	$1.15	$1.15	0.0	0.36	A
Bossier:										
Bellevue	19.0	.940	788	472	1.50	1.25	1.25	....	....	....
Elm Grove	29.5	.879	222	222	2.10	1.14	1.11	13.5	.27	M
Caddo:										
Caddo—light	40.1	.825	3,587	4,310	2.45	1.36	1.40	....	....	....
Caddo—heavy	26.5	.896	1,162	1,479	2.10	1.10	.91	....	....	....
Calcasieu:										
Edgerley	2.10	.928	207	467	1.60	1.20	1.20	.0	.68	A
Lockport	24.8	.905	1,343	2,038	....	....	....	....	....	....
Starks	21.0	.928	....	262	....	1.20	1.20	....	....	....
Sulphur	20.9	.929	....	(1/)	....	....	....	....	....	....
Vinton	18.6	.943	2,215	1,786	1.60	1.20	1.20	....	....	....
Cameron:										
Hackberry	21.0	.928	....	(1/)	....	1.15	1.15	....	....	....
Sweet Lake	29.5	.879	1/ 16	1/ 81	....	....	....	....	....	....
Claiborne:										
Haynesville	35.0	.850	3,328	2,600	2.10	1.26	1.25	....	....	....
Homer	3.2	.844	2,033	1,785	2.20	1.28	1.28	30.2	.63	M
De Soto:										
De Soto	36.0	.845	321	541	2.30	1.28	1.28	....	....	....

State, county, field	Average gravity: Degrees A. P. I.	Average gravity: Specific gravity	Production (thousands of barrels): 1926	Production (thousands of barrels): 1927	Posted price per barrel, July 1: 1926	Posted price per barrel, July 1: 1927	Posted price per barrel, July 1: 1928	Per cent gasoline	Per cent sulphur	Type (base of crude)
Iberia:										
Iberia	21.0	.928	....	(1/)	....	....	....	....	....	....
Jefferson Davis:										
Welsh	22.0	.922	(1/)	(1/)	....	....	....	....	....	....
[fol. 83] La Salle:										
Urania	21.0	0.928	3,669	3,321	1.15	1.00	0.75	....	....	....
Red River:										
Bull Bayou-Crichton	39.5	.828	1,037	1,070	2.25	1.34	1.37	....	....	....
St. Martin:										
Anse La Butte	24.0	.910	17	17	....	....	....	....	....	....
Webster:										
Cotton Valley	29.0	.882	2,914	1,968	1.20	1.00	....	.75	....	....
Haynesville (See Claiborne).										
State	29.9	.877	23,201	22,818	1/1.65	2/1.30	....	....	....	....

1/. In 1926 Sweet Lake includes Welsh. In 1927 Sweet Lake includes Hackberry, Iberia, Sulphur, and Welsh.
2/. Average value per barrel for year.

[fol. 84] IN UNITED STATES DISTRICT COURT

In Equity. No. 19129

OHIO OIL COMPANY

vs.

E. A. CONWAY, Supervisor of Public Accounts, Substituted as Defendant for W. N. McFarland, Former Supervisor of Public Accounts

Before Foster, Circuit Judge, and Dawkins and Borah, District Judges

OPINION—Filed Aug. 9, 1929

On Final Hearing

FOSTER, C. J.:

In this case plaintiff filed a bill seeking interlocutory and final injunctions to prevent the collection of certain taxes, levied under the provisions of Act No. 5 of 1928 of the Louisiana Legislature, on the ground that the taxes imposed by said act are unreasonable, discriminatory and would deprive it of the equal protection of the laws, in contravention of the 14th Amendment of the Constitution of the United States. And also on the ground that the Legislature exceeded its authority under the Constitution of Louisiana in adopting said act.

On a former hearing an interlocutory injunction was denied. Ohio Oil Company vs. McFarland, 28th Fed. (2nd) 441. On appeal from that decision the Supreme Court reached the conclusion that the questions of fact presented could not be satisfactorily determined from the affidavits presented and, as there was danger of irreparable injury to the plaintiff, an interlocutory injunction on terms should have been granted, pending a hearing on the merits. Ohio Oil Co. vs. Conway, 279 U. S.—, decided March 5, 1929. The material allegations of the pleadings and the provisions of the law complained of are set out in detail in the opinion above referred to and need not be repeated. Stated as briefly as possible, the case is this.

[fol. 85] Sec. 21 of Art. 10 of the Constitution of Louisiana of 1921 authorizes the levying of taxes on the natural resources of the state severed from the soil or water; provides that such natural resources may be classified for purposes of taxation; and that such taxes may be predicated upon either the quantity or value of the product, at the time and place where it is severed. Act No. 140 of 1922, adopted to carry into effect the above quoted article of the Constitution, imposed a tax of oil and gas of three percentum on the gross market value of the production thereof. By Act No. 5 of 1928, the Act of 1922 was amended with the intention of imposing severance taxes on natural resources by quantity rather than by value. This last act divides oil into six classes according to gravity and taxes it at different rates per barrel, beginning with oil of 28 gravity and below, taxed at four cents, and ending with oil above 43 gravity, taxed at eleven cents.

Plaintiff is engaged in producing crude oil solely in certain oil fields in North Louisiana, to wit: the Urania field in LaSalle parish, the Haynesville field in Claiborne parish, the Pine Island field in Carro parish, and the Cotton Valley field in Webster parish. The oil produced in the Urania field is below 28 in gravity; in the Haynesville field it runs from 30 to 35.9 gravity; in the Pine Island field from 30 to 39.9 gravity; and in the Cotton Valley field from 31 to 52 gravity. In the year 1927 in round numbers 18,000,000 barrels of oil were produced in North Louisiana and 5,000,000 in South Louisiana fields, a total of 23,000,000 barrels. Later statistics are not in evidence. Palintiff produces about 1,200,000 barrels per annum say about 6.7 per cent of the total in North Louisiana and about 5.2 per cent of the total in the state.

Crude oils vary greatly as to base, having a paraffine, asphalt or mixed base, and in chemical content and gravity. The term gravity as applied to oil does not mean specific gravity as the lighter the oil the higher the gravity. The higher gravity oils usually have a paraffine base and are more valuable for the extraction of gasoline and other burn-[fol. 86] ing oils while the lower gravity oils usually have an asphalt base and are more valuable for the making of lubricating oils and gas oil, a substance from which gasoline may be extracted by a process known as cracking. How-

ever, the value of the lower gravity oils for the making of lubricating oil depends a great deal upon the amount of sulphur contained, the more sulphur the less value. The gravity of oil is easily determined by the use of a hydrometer marked according to the Beaume or some similar scale. All oil is tested for gravity at the well when delivered to the pipe line companies and the gravity grade is shown on the run tickets.

It appears from the price lists printed in the accredited trade journals, which are taken from those posted by the various oil companies, and also from the report of the Louisiana Conservation Commission for the years 1926-1928, all filed in evidence, that in all oil fields throughout the country oil is listed according to gravity and usually the price is higher for higher gravities although oils of the same gravity in different fields vary somewhat in price.

In North Louisiana fields oil varies in gravity from below 28 to above 43. In the South Louisiana fields until recently oil varied in gravity from below 28 to about 30. Now a new well has been brought in at a depth of 5,000 to 6,000 feet and produces oil of about 40 gravity. However, in this field oils are graded for sale as "A" and "B". Oil of "A" grade is of 19 to 26 gravity, should contain not more than four-tenths of one per cent of sulphur and has definite specifications as to viscosity. It is very desirable for the making of lubricating oil. Grade "A" oil sells at a flat price regardless of gravity. All other oil in South Louisiana fields is classed as B grade and is listed for sale according to gravity. There is a difference in the cost of transporting oil from the wells to the refineries in favor of South Louisiana fields of about 22 cents per barrel.

[fol. 87] Taking the figures from the report of the Louisiana Conservation Commission above mentioned, which will serve as well as any for comparison, it appears that all oil has fluctuated considerably in market price over a period of five years, the tendency being generally downward and production in Louisiana has fallen off. The prices listed as of February 21, 1928, show oil of 38 plus gravity (taxed at 10 cents) at $1.34 and $1.55 per barrel; oil of above 32 to 36 gravity (taxed at 8 cents) at $1.13, $1.20 and $1.26 per barrel; oil of 20 to 22 gravity (taxed at 4 cents) at 75¢ per barrel and oil in the Bellview field in North Louisiana of

19 to 20 gravity (taxed at 4 cents) at $1.25 per barrel. Oil of A grade of South Louisiana of 26 gravity and below (taxed at 4 cents) at $1.20 per barrel.

Plaintiff's contention as to inequality is based on the above shown discrepancies in the amount of the tax imposed, measured by an ad valorem standard. That is to say, A grade oil is taxed only about 3.3 per cent of its value while oil of the same gravity produced by plaintiff is taxed at 5.3 per cent of its value and oil of higher gravities, which sells for the same price as A grade oil, is taxed at double the amount per barrel or about 6.6 per cent of its value.

Undoubtedly a state has the right to impose specific taxes as well as ad valorem taxes, unless prohibited by the state constitution. The constitution of Louisiana expressly authorizes the levying of specific taxes on oil severed from the soil. Specific taxes must bear some relation to value. Cooley on Taxation, 4th Ed., par. 297. If the legislature had taxed all oil at say 4¢ per barrel the producers of low valued oil would have had just cause to complain. Classification was therefore necessary. Analyzing the figures shown by the evidence it appears that oil above 28 gravity while taxed at different rates per barrel is taxed at about the same rate, say 6.6 per cent, ad valorem; and that all oil below 28 in gravity, leaving out of consideration peculiar [fol. 88] properties making it more desirable for the manufacture of lubricating oil, is taxed at about the same rate, say 5.3 per cent ad valorem. As to the A grade oil of South Louisiana, notwithstanding the advantage it enjoys from closer proximity to the refineries and lower rates of transportation, it is taxed the same as oil in the Bellview field in North Louisiana having similar desirability for making lubricating oil, say 3.3 per cent ad valorem.

In adopting Act 5 of 1928 providing for definite taxes by the barrel and defining different classes of oil, taxable at different rates per barrel, the legislature was acting well within the authority granted by the Louisiana Constitution.

The provisions of the 14th amendment requiring the equal protection of the laws as applied to state statutes have been repeatedly considered by the courts and the principles governing are well established. As to laws imposing taxes it is well settled that the states may classify prop-

erty and occupations for purposes of taxation. The legislature has a wide discretion in adopting the classification and it need not be scientifically exact provided it is reasonable, not arbitrary, not intentionally discriminatory, and rests upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike. The tax need not operate equally throughout the state, provided it is equal as to all persons within a particular district. Louisville Gas Co. vs. Coleman, 277 U. S. 32; Sunday Lake Iron Co. vs. Wakefield, 247 U. S. 350; Toyota vs. Hawaii, 226 U. S. 184; Billings vs. Illinois, 188 U. S. 97: Bell's Gap R. R. Co. vs. Pa., 134 U. S. 232.

It is impossible to have exact equality of taxation even on an ad valorem basis. Difference of opinion between assessors alone would prevent. If the legislature had been so minded they could have provided the North and South Louisiana oil fields into taxing districts and imposed a different rate in each. Or they could have classified oil as that more valuable for making lubricating oil and that more [fol. 89] valuable for making gasoline and imposed different rates. In classifying oil the legislature was not bound to take into consideration all the different properties that oil from different fields might possess and act accordingly. Nor were they obliged to foresee fluctuations of market value which with oil, as with any other commodity, depends largely on supply and demand. It is certain that gravity is one means of identifying all oil, is universally used by the trade, and has a definite relation to value in oil of comparatively the same properties. That some inequality of taxation results does not render the classification made by Act 5 of 1928 so unreasonable as to infringe the 14th amendment. There is no basis for holding that the law is intentionally discriminatory and the tax bears equally on all persons producing the same quality of oil.

The injunction prayed for will be denied and the bill will be dismissed.

[fol. 90] IN UNITED STATES DISTRICT COURT

In Equity. No. 19129

OHIO OIL COMPANY

vs.

E. A. CONWAY, Supervisor of Public Accounts, Substituted as Defendant for W. N. McFarland, Former Supervisors of Public Accounts

FINAL DECREE—Filed Aug. 9, 1929

This cause came on for hearing at a former day, the evidence was taken in open Court and the case was argued by counsel, whereupon the court took time to consider. And now being advised, for the written reasons filed this day,

It is ordered, adjudged, and decreed that the injunction prayed for to prevent the collection of taxes imposed by Act No. 5 of the Louisiana Legislature for the year 1928 be denied and that the bill be dismissed. Plaintiff to pay all costs.

(Sgd.) Rufus E. Foster, United States Circuit Judge. (Sgd.) Ben C. Dawkins, United States District Judge. (Sgd.) Wayne G. Borah, United States District Judge.

August 9th, 1929.

[fol. 91] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO SUPREME COURT OF THE UNITED STATES AND ORDER ALLOWING SAME AND CONTINUING PRELIMINARY INJUNCTION UPON APPELLANT FURNISHING BOND IN THE SUM OF $50,000.00—Filed Aug. 20, 1929

In the above styled and numbered cause, comes now The Ohio Oil Company, the complainant, and showing that there is manifest error to its prejudice in the decree dissolving the preliminary injunction and dismissing its suit, now moves and prays the Court for the reasons specifically set

out in the assignment of errors which it is herewith filing, that it be granted an appeal with supersedeas, to the Honorable the Supreme Court of the United States and complainant further moves and prays that the preliminary injunction heretofore entered herein be continued in full force and effect pending the aforesaid appeal.

(Signed) S. L. Herold, S. P. Cousin, R. L. Benoit, Solicitors for Complainant.

Order

The above petition for an appeal, and for continuance of the preliminary injunction heretofore issued herein pending said appeal, having been considered, and counsel for complainant and defendant having been heard, it is hereby ordered that the appeal be granted as prayed for, to offer it as a supersedeas, and that pending said appeal the preliminary injunction heretofore isued by this Court be continued in full force and effect upon complainants furnishing bond, conditioned as the law directs in the full sum of Fifty Thousand Dollars.

Thus done and signed at New Orleans, Louisiana this 20th day of August, 1929.

(Signed) Rufus E. Foster, Circuit Judge; Wayne G. Borah, Ben C. Dawkins, Judges.

[fol. 92] In United States District Court

Assignment of Errors—Filed Aug. 20, 1929

In the above entitled and numbered cause, comes now the plaintiff, The Ohio Oil Company, and respectfully shows that in the opinion and decree herein handed down on final hearing denying its application for a writ of injunction and dismissing its bill of complaint, there is manifest error to its prejudice; and, for specification of such error, plaintiff shows that this Honorable Court erred:

1

In holding that Act No. 5 of the Louisiana Legislature of 1928 is not violative of the provisions of Section 21 of

Article X of the Louisiana Constitution, requiring severance taxes to be predicated upon either quantity or value.

2

In holding that Act 5 of 1928 of the Louisiana Legislature is not void in denying to the complainant the equal protection of the laws, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

3

In holding that the severance tax imposed by Act 5 of 1928 is levied according to quantity.

4

In holding that the classification by gravity attempted by said Act 5 of 1928 is not unreasonable and arbitrary.

5

In not holding that gravity is no indicium of relative value, utility or content with respect to the oils produced in Louisiana generally, and therefore is entirely an arbitrary method of classification.

6

In holding that a classification of oil for the purpose of the imposition of severance taxes at varying specific rates is permissible under Section 21 of Article X of the Constitution of Louisiana.

[fol. 93]

7

In not holding that the basis of classification attempted by said Act 5 of 1928, namely the gravity of the oil produced, necessarily results in an arbitrary, unreasonable and oppressive discrimination against this complainant.

8

In not holding that the classification of all oil produced in Louisiana according to gravity and the imposition of

different specific taxes upon each such attempted class is justified by no ground of difference bearing a reasonable and just relation to the equal protection of the laws guaranteed by the Fourteenth Amendment.

9

In not holding Act 5 of 1928, to be void as violative of the Fourteenth Amendment because of the proof that its system of imposition of severance taxes upon oil is of such character that substantial equality will not result from its operation.

10

In not holding the method of graduation of specific taxes upon crude oil of different gravities by Act 5 of 1928, to be so unreasonable as necessarily to result in arbitrary discrimination which particularly affects the plaintiff.

11

In not holding that the discriminations effected by Act 5 of 1928 were and are intentional.

12

In holding that the Legislature may, consistently with the equal-protection clause of the Fourteenth Amendment to the Constitution of the United States, impose severance taxes upon producers of oil in North Louisiana, (where plaintiff operates exclusively) substantially greater than upon those engaged in the identical business in South Louisiana.

13

In not holding the provisions of said Act 5 of 1928 imposing a severance tax on oil to be violative of the Fourteenth Amendment to the Constitution of the United States, in view of the proof that the plaintiff is thereby subjected to a burden of taxation excessive and unreasonable as compared with that levied upon other persons engaged in the same occupation, as the direct result of the varying of

[fol. 94] the tax according to arbitrary standards fixed in said act.

Wherefore plaintiff prays that said decree be reversed.

(Signed) S. L. Herold, S. P. Cousin, R. L. Benoit, Solicitors for Complainant.

[fol. 95 & 96] Supersedeas bond on appeal for $50,000, approved and filed August 20, 1929, omitted in printing.

[fol. 97] In United States District Court

In Equity. No. 19129.

The Ohio Oil Company

vs.

E. A. Conway, Supervisor of Public Accounts of the State of Louisiana

Narrative Statement of Evidence—Filed Oct. 10, 1929

Condensed and Narrative Statement of the Testimony

This cause came on for hearing in open court on June 25, 1929, before the District Court, composed of Honorable Rufus E. Foster, Circuit Judge, and Honorable Ben C. Dawkins and Honorable Wayne C. Borah, District Judges.

Whereupon, the trial was proceeded with and testimony of witnesses taken, which is now stated in condensed and narrative form, in accordance with the rules of practice in such cases provided, as follows, to wit:

R. A. Burdick, a witness for the plaintiff, testified:

That he is a Cashier of the complainant, The Ohio Oil Company, with which he has been connected for 27 years. The Ohio Oil Company first engaged in the business of producing oil in Louisiana in May, 1921, and is operating as such producer in the Haynesville, Cotton Valley and

Pine Island fields and until recently in the Urania field; Haynesville being in Clairborne Parish, Cotton Valley in Webster Parish, Pine Island in Caddo Parish, and Urania in La Salle Parish, and all these parishes being in Northwest Louisiana. The Ohio Oil Company maintains an office in Shreveport, where its records are kept. Prior to the passage of Act 5 of 1928, the complainant company had spent, in connection with its business of drilling for and producing oil in Northwest Louisiana, approximately seven or eight million dollars. In August, 1928, the production [fol. 98] of the plaintiff corporation in the Haynesville field was approximately 2800 barrels per day; in the Cotton Valley field, 1500 or 1600 barrels per day; in the Pine Island field, about 800 barrels per day; and in the Urania field about 1200 barrels daily. This was the average daily production of the plaintiff during that period. The average production for the eight months from August 1, 1928, to April 1, 1929, was 100,750 barrels per month, of the value of $116,336.00. The witness has prepared detailed statements showing the total numder of barrels produced each month during the aforesaid period from each of the fields in which the plaintiff operated, together with the market value of such oil. The statement also shows the amount of tax which the plaintiff would have paid on tha production under the law as it was in effect before 1928, and also the tax that would be exacted from the plaintiff under the provisions of Act 5 of 1928. The witness testified that these statements are correct; whereupon they were offered in evidence, filed, and marked "Plaintiff A-1" and "Plaintiff A-2," and appear elsewhere in this record.

The increased tax that would be exacted of the plaintiff under the new law, Act 5 of 1928, in excess of that imposed under the previous act, for the eight months from August 1, 1928, to April 1, 1929, would be $26,954.00, an increase of approximately 110 per cent.

The three per cent tax exigible under the old law would have been, for the eight months, $24,430.00 and that under Act 5 of 1928, $51,384.00, an increase of$26,954.00 for the eight-month period.

The two statements—Plaintiff A-1 and Plaintiff A-2—correctly state the gravity of the oil produced by th plain

tiff companq in each of the fields, and the quantity of oil of each particular gravity mentioned in the statement.

The business of The Ohio Oil Company in Louisiana is solely the production of oil and gas, which it sells at the mouth of the well to pie-line companies. The Ohio Oil [fol. 99] Company owns no refineries in Louisana, and it does not ship any out of the State, all of its production being sold in the State of Louisana. The prices shown on the statement are also correct and are the prices received by the plaintiff from the pipe-line companies.

Cross-examination:

The gravity of the oil is shown on the run tickets given to plaintiff company by the pipe-line company that runs the oil, and such gravity is determined by the use of a hydrometer. There is no difficulty in the determination of the gravity of crude oil; it is determinated with a dydrometer, and any one can use such instrument.

The Ohio Oil Company purchased no crude oil, except that in the Haynesvildle field it buys some of the royalty oil of the lessors under its leases. The business of The Ohio Oil Company is that of producing and selling oil, and not of refining it. Its purchases and sales in each field in which it operates are made on a gravity basis.

C. D. Keene, a witness for the plaintiff, testified:

He is a resident of Shreveport, Louisiana, where he has been living for 19 years, being engaged there in the business of producing and refining oil. The witness is a graduate of the Technical University of Delft, Holland, where he was graduated as a mining engineer. He was born in Holland. He was for a time in the employ of the government coal mines in Holland, and afterwards was engaged in geological work for oil companies in Rumania, whence he came to America. The witness has been extensity engaged in the oil business since he came to Shreveport, being interested in the drilling of wells in almost every oil pool in North Louisiana and South Arkansas. He is President of the Keen & Woolf Oil Company, which for a num-

ber of years operated a refinery in Houston. Witness is also interested in the Shreveport Producing & Refining Company, of which he has been President, which company [fol. 100] is engaged in the business of refining North Louisiana and South Arkansas crude oil. Witness has been closely associated with the business of producing, refining and selling oil in Louisiana for 19 years.

Gravity is the proportion between the weight of a given quantity of any material as compared to an equal volume of water at 60 degrees Fahrenheit. This is called specific gravity. The term "Gravity" as used in the oil business, however, is not specific gravity, but Beaume gravity, under which the lighter the substance the higher the Beaume gravity; so that a heavy oil is of a low Beaume gravity, and a light oil is of a higher Beaume gravity.

The only system of drilling that is used in the production of oil in Louisiana is what is known as the rotary system. This is true in both North and South Louisiana, there being no difference in the method or system used for obtaining oil in the different sections of the State.

Crude petroleum is a mixture of many hydrocarbons. Generally speaking, crude petroleums are divided into three classes, paraffine-base, asphalt-base and mixed-base crudes, the latter being a combination of paraffine- and asphalt-base crudes. All three of these classes are found in Louisiana. In North Louisiana there are found paraffine-base, mixed-base and asphalt-base crudes. In South Louisiana the oil produced is almost exclusively asphalt-base crude.

These different petroleums are identified as of a specific base by the product obtained from the residuum after distillation. If the residuum is paraffine, it is a paraffine-base crude; if the residuum is asphalt, it is an asphalt-base crude; and if the residuum is a combination of paraffine and asphalt, it is a mixed-base crude.

The process of refining oil is distillation. Paraffine-base oil in that manner yields gasoline, kerosene, gas oil, some lubricating oils, and wax. Asphalt-base crude usually [fol. 101] yields a very small amount of gasoline by distillation, the first product ordinarily being gas oil, then lubricating oil, and the residuum, which is asphalt. In the case of paraffine-base oil, gasoline comes off first. The gas oil, which is the first product obtained from asphalt-base

oils, may be subjected to the cracking process and gasoline thereby obtained. The asphalt-base crudes in the Gulf Coast district of Louisiana are very valuable for the production of lubricating oil, and the gas oils obtained by distillation are very desirable for the manufacture of gasoline by cracking. Some of the asphalt-base crudes of North Louisiana, such as those of the Urania, Bellevue and Hosston fields, are valuable for lubricating purposes, but Pine Island heavy oil does not have that value. All crude petroleums are compositions of various hydrocarbons. The fact that two oils are of the same specific gravity does not in any way indicate that they have the same contents, because the gravity is the sum of the total of the gravities of the various components entering into the crude. A crude petroleum of a definite Beaume gravity may contain a good deal of gasoline, some kerosene and, for the remainder, fuel oil; whereas another oil of the same gravity may contain a great deal less gasoline, much kerosene and very little fuel oil. Gravity is an index of relative value of oils only in the same pool or district. It has very little connection with the relative value of oils from different fields.

The crude oil, as it comes from the well, is run into tanks, from which the producer sells to the pipe lines, the well recognized market prices being the prices posted by the pipe-line companies buying the oil.

Asphalt-base crudes are produced, in North Louisiana, in Pine Island, Hosston, Bellevue and Urania. The oil produced in Urania, Bellevue and Hosston is all sold at flat prices. Gravity is a factor in price changes only in Caddo fields, De Soto-Red River fields, Homer, Haynesville and Cotton Valley, which fields produce similar paraffine-base [fol. 102] crudes from closely associated territories and from similar sands. The oils produced in South Louisiana are sold at flat prices, and not by gravity.

The Oil Weekly is a reliable trade journal. The witness, being handed a copy of the Oil Weekly of May 28, 1926, being the same issue that was filed in evidence by the defendant on the rule for preliminary injunction, stated that the journal showed that oil was sold on a flat-price basis in Bellevue, Jennings, Vinton, Edgerly, Stark's Dome, Urania and Calion, and at Cotton Valley below 36 gravity. Hosston oil is not quoted, but it is never sold on a gravity

basis, but, to the witness' knowledge, always at a flat price.

At this point plaintiff offered in evidence the Oil Weekly of May 25, 1928, which is made a part of defendant's answer in this cause, with particular reference to page 130, showing posted prices of Louisiana crude. Said document was filed in evidence and marked "Plaintiff B," and appears elsewhere in this record.

Oils of different gravities are produced in the same fields, and from the same tracks of land, and sometimes from the same sand. As wells grow older, the Beaume gravity tends to increase.

With respect to Gulf Coast crude suitable for the manufacture of lubricating oils, the heavier the oil—that is to say, the lower the Beaume gravity—the more desirable it is for such manufacture, because the heavier the oil the larger the proportion of lubricants that can be extracted.

Witness is familiar with Urania oil, having produced there, and having used such oil in his refineries. To his knowledge, it is practically the same as Gulf Coast "A" oil. Gulf Coast crudes, which are produced in South Louisiana, are divided into "A" and "B" grades, according to their utility for the production of lubricating oil, the "A" grade being that which is valuable for such purpose. The demarcation between the grades is determined by viscosity and sulphur content, but "A" grade oil must be less than 25 degrees Beaume gravity. Hosston, Bellevue and Urania oils, in North Louisiana, are used for the manu-[fol. 103] facture of lubricants, and are practically the same as Gulf Coast "A" crude.

Cross-examination:

As between similar oils, gravity is indicative of relative value, but not as between different kinds of oil.

"Q. Do you regard gravity as an arbitrary, or rather as a reasonable and significant method of selling and buying oils?

"A. No, sir; I do not.

"Q. You do not regard it as reasonable?

"A. As between similar oils. It is an indicator——

"Q. What I mean is this——

"A. As between different oils, it is not.

"Q. The gravity test is generally used for the selling and buying of oils on the market, that is, the oil dealer deals with the consumer, deals with the manufacturer, and deals with the pipe line men on a gravity basis. Now do you say that that is not a fairly reasonable method of dealing in oil for selling and buying purposes?

"A. As between oils of similar nature, I think it is a very wise scale to adopt.

"Q. Is that the reason you consider it not a reasonably fair method of buying and selling oil?

"A. I can only repeat my statement that it is fair; the gravity basis is fair between oils of similar nature.

"Q. Why do they use it for oils of all natures; why does the A. P. I. and trade adopt it and use it?

"A. Well, of course, it does not mean that the gravity scale as adopted is the only way to express the gravity. Any other gravity would be just as good. It is a handy and quick way and has some merit to find out how much money producers are entitled for their oil.

"Q. Then it is a fair, reasonable and just method of dealing in oil?

"A. In that particular case, yes. In addition I would say this, it is not uniform everywhere. In that same trade journal it gives prices quoted for oil in California which I think is better than the one in Louisiana. It is partly based on gravity and partly based on pool. It gives 12 different fields and you can find by going down the names of the fields, and opposite the gravity, and for what you can buy that particular crude.

[fol. 104] "Q. That does not maintain in Louisiana?

"A. No, but I say it is the proper way to buy crude on the gravity basis."

(Quoted part inserted at request of defendant.)

Bellevue oil is transported by pipe line and tank cars. Urania oil is handled by tank cars. Hosston oil is refined at Hosston. All of the oil in the Mid-Continent fields is bought on a gravity basis, although in West Texas crude oil was sold on other than a gravity basis until a few weeks before.

The gasoline contained in paraffine oils and obtained by distillation is an important element in its value. With re-

spect to Gulf Coast oils, although they contain little gasoline naturally, they can be rendered valuable for gasoline content by the breaking up of the molecules by the cracking process. In the case of Gulf Coast "A" grade crudes, lubricating oil is the largest determinative factor in the price; whereas, with the light paraffine-base crudes, the gasoline content is the principal factor. While Grade "A" oil of the Gulf Coast must not be over 25 gravity, gravity is really an unimportant factor, because any oil between 17 and 25 gravity Beaume may be an "A" grade oil, provided it meet the specifications as to viscosity and sulphur content.

"Q. In arriving at Grade "A" oil in South Louisiana, does gravity mean anything at all to you? Has it any relationship to that grade?

"A. Yes, sir; it has.

"Q. Explain what it is.

"A. I know this. I will put myself now in the position of a purchaser of Grade "A" oil. I know if I go to a purchaser and his oil is less than 25 gravity, I will tell him that he has Grade "A" oil and pay him for Grade "A" oil, but I would know deep down in my own heart if I did that man justice I would pay him more for the oil. I can afford to pay 20 or 25 cents more for 19 gravity than for 24. I make the same profit or lose the same money in refining it.

"Q. When you went out in the South Louisiana fields to buy crude, would you measure it and take the gravity just as you would anywhere else in Louisiana.

"A. If I went to purchase and didn't know what the quality of the oil was, I would take a sample of it, may be thirty or fifty gallons and ship it to my laboratory and the [fol. 105] first test I would tell the Chemist to make would be the gravity; and then it has to be analyzed. These different tests would have to be made before I pay that man for Grade-A oil.

"Q. Let us assume that you know exactly what Grade-A oil is, and you are in the Gulf Coast Section. Will you determine the gravity of that oil in the field before you take it?

"A. Yes.

"Q. Isn't that the only test you make in that field, if you know what it is already?

"A. No, sir; I would not say so.

"Q. Would you go back to your laboratory again before you would buy that oil?

"A. Yes, sir.

"Q. But you would ascertain the gravity—

"A. Yes, sir.

"Q. Immediately?

"A. Yes, sir."

(Quoted part inserted at request of defendant.)

Prior to about 12 years ago, there was no classification of Gulf Coast crudes, but, with the discovery of lighter oils not suitable for lubricating stock, it became necessary to make a distinction between the grades of petroleum found in the Coastal fields. "B" grade crudes are desirable because of ability to obtain gasoline by the cracking process from the gas oil, obtained by distillation of the crude.

A well was brought in in the Jennings field a few weeks before the trial, producing oil of a gravity of about 35 Beaume, and which was valuable for its gasoline content. So far as the witness can remember, Coastal "A" oil has always sold at a flat price.

Oil is produced in North Louisiana and South Louisiana by the same method; that is, by the same kind of labor, machinery and derricks—all by the rotary system. Oil is found at different depths in the various portions of the State, there being shallow wells in North Louisiana and South Louisiana, and deep wells in North Louisiana and South Louisiana.

It is a fact that crude oil today in the Mid-Continent [fol. 106] field is sold on a gravity basis, by reason of the fact that the higher the gravity the higher the gasoline content. Under the modern method of manufacturing and refining crude oil, the heavier elements of Gulf Coast Crude "A" grade could be broken up by the cracking process and become valuable for its gasoline content; but the Gulf Coast Crude "A" is peculiarly adapted for lubricating oil. The gasoline developed by the cracking process from Grade

"B" crude is higher than that from cracking paraffine crudes.

(This paragraph inserted on request of defendant.)

Redirect examination:

With reference to the statement on cross examination that prices in the Mid-Continent field were regulated by gravity, he was referring to Oklahoma and Kansas, where the oils are paraffine—and mixed-base crudes. There is no relationship between gravity and value except as between similar oils. Such relationship depends upon the content of the oil.

E. OLIVARI, a witness for the plaintiff, testified as follows: He is an oil accountant of the Gulf Companies, at Houston, and is familiar with the prices and the gravity of oils produced in the various fields of Louisiana. In North Louisiana, 62.75 per cent of the oil is purchased on the gravity basis. This covers Caddo, Haynesville, Homer and the De Soto-Red River fields, where oil is purchased on a gravity basis, and Elm Grove, Bellevue, Urania and Cotton Valley, where purchasers are made at flat prices, as they also are of the heavy oils from the Pine Island field in Caddo. The total production of the fields in North Louisiana on June 1, 1929, was 21,900 barrels per day sold on a gravity basis, and 13,000 barrels per day sold at flat prices, unaffected by gravity; making a total of 34,900 barrels per day produced in North Louisiana.

[fol. 107] At the same date, the total production of oil in the Coastal fields—that is to say, in South Louisiana—was 18,741 barrels, of which 53.74 per cent, or 10,071 barrels, was Grade "A", and 46.26 per cent, or 8,635 barrels, was Grade "B". Grade "A" oil was on that date selling for $1.30 a barrel. The Gulf Refining Company buys Grade "B" oil at flat prices; that is to say, the Gulf Refining Company paid $1.30 for all Coastal oil. Some of the other companies, however, are buying Coastal "B" oil on a gravity basis. The range of gravity on that date in the South Louisiana fields was from 19.3 to 30.4. Only 725 barrels of a gravity of more than 28 Beaume was being produced in South Louisiana on June 1, 1929, although

since that date a well was brought in in the Jennings field producing oil of a higher gravity.

Cross-examination:

The oil from the Elm Grove, Bellevue and Urania fields, in North Louisiana, and that from Cotton Valley below 36 gravity, and from Caddo below 28 gravity, is sold and purchased on a flat-price basis. The oil in Cotton Valley selling at flat prices ranges from 28 to 30 gravity. There was no gravity from 30 to 36 in the Cotton Valley field. The oil from Elm Grove ranges from 28 to 32 in gravity, and is sold at a flat price of $1.10 per barrel. Bellevue oil averages about 19 Beaume gravity. Caddo heavy oil below 28 gravity sells at a price of $1.00 per barrel; and Cotton Valley below 36 Beaume, at 85¢ a barrel.

Oil produced in the Jennings field is transported by barges and tank cars. Witness is not familiar with the rates or charges for transportation.

The figures given for the production of oil in North and South Louisiana on June 1, 1929, were not segregated as to asphalt- and paraffine-base crudes.

[fol. 108] Redirect examination:

Witness identifies statement, Plaintiff "C", which he testifies correctly reflects the data therein set out, which document was offered in evidence, filed, and marked "Plaintiff C".

The witness further testified that the price obtainable by the producer at the well is the posted pipe-line price.

L. T. Garrett, a witness for the plaintiff, testified:

That he is the Vice President of the Gulf Production Company and the Gulf Refining Company of Louisiana, having supervision over the Leasing Department and the Production Department of these companies in South Louisiana. He has been engaged in the production of oil for 27 years, with the Gulf Companies for 22 years, and is familiar with the oil fields of Louisiana.

With respect to paraffine-base oils, the higher the gravity the greater is the gasoline content, which, as between paraf-

fine-base oils, is largely determinative of price; the most valuable component of such oils being the gasoline. Gravity is, as respects these oils, only a rough method of approximation of the gasoline content, and does not indicate the relative value of such oils from different fields. With respect to asphalt-base oils, their value is largely for the manufacture of lubricating oils, the proportion of lubricant in the oils being determinative of value. This is largely measured by its viscosity, gravity not being an important element in the determination of the value of the oil. The largest factor in the determination of the value of asphaltic-base oils is viscosity, and next, sulphur content, gravity not entering into the test. As to mixed-base oils, the recoverable element in distillation giving them their principal value is the gas oil. Of the oils produced in the Coastal fields of Louisiana, those suitable for the manufacture of lubricant are classed as "A" grade; the others, which are asphalt- and paraffine-base combined, being classed as "B" grade. There is no common index of value [fol. 109] which can be applied generally among different classes of oil.

Cross-examination:

As to high-gravity or light oils, the Mid-Continent field is the predominant field of the United States, and largely is determinative of prices in the various fields, except as to Coastal oils. In the witness' opinion, gravity is no factor in the determination of value of Coastal oils, that being ascertained by viscosity and freedom from sulphur. The idea conveyed to the witness, as a practical oil man, by the term "Coastal 'A' oil" is that it is an oil suitable for the making of lubricants. Gasoline could be obtained from such oil by cracking, but it is more valuable because of its lubricating qualities. Gasoline being obtained so much more cheaply from the paraffine crudes, the principal value of the Coastal crudes must be for many years for the manufacture of lubricants and fuel oil. While it is always customary to determine the gravity of oils, the gravity is not a factor in the determination of the classification of Coastal oils. The only reason why a figure is fixed as the highest gravity that will be taken for Grade "A" oil is that, if the oil is of a higher gravity, it has a mixture of paraffine base,

and hence is less desirable for lubricants. While some oils of very low gravity show considerable paraffine, and therefore are not suitable for the manufacture of lubricants, an oil is apt, when it reaches a gravity of more than 25, to contain paraffine, and hence not be suitable for lubricant stock. Witness would consider as Grade "A" oil any oil that is useful for the manufacture of lubricants, regardless of its gravity. All other Coastal oils are Grade "B". There is considerable gas oil produced by distillation from Coastal "B", from which gasoline is obtainable by cracking. Such oil is a mixed-base oil, chiefly valuable for gasoline. The majority of the oil fields in South Louisiana produce oil of asphalt base, although some produce mixed-base oils. [fol. 110] The oils generally of North Louisiana are of paraffine base, with the exception of certain fields. Some of the fields of South Louisiana produce oils valuable both for lubricants and for gasoline. Up to the date of the bringing in, shortly before the trial, of the well from the new sand at Jennings, the oil produced from that field was all of asphalt base. Oil from the new well is of a gravity between 34 and 35, and would fall into the classification of Grade "B", out of which gasoline could be made. It would not be valuable for lubricants. It would also make kerosene.

Posted pipe-line prices as shown in the Oil Weekly are correct, but the witness' company buys all Coastal oil in Louisiana, whether of Grade "A" or Grade "B", at flat prices, paying $1.30 a barrel for all Coastal oil.

From the standpoint of economy and not from the absolute value of the component parts of the crude oil of the Coastal section of Louisiana, they are valuable for lubricating oil. Grade "B" oil is that which is not used in making lubricating oil. There is considerable gasoline made out of it. The majority of the oil fields of South Louisiana are of a mixed base, being both paraffine and asphalt, while the oils generally of North Louisiana are of paraffine base, with few exceptions. Stark's Dome, located in South Louisiana, is a mixed base, and is not what one would term really a lubricating oil. All of the oils in the Jennings field, up to the recent discovery of the Yount-Lee well, were asphalt base. The Yount-Lee well is valuable for its gasoline rather than for lubricating oil.

(This paragraph inserted at request of defendant.)

Redirect examination:

In the posting of pipe-line prices of Coastal oil, Grade "A" is defined as having a Beaume gravity of not over 24 at 60 degrees Fahrenheit, viscosity not less than 100 seconds Universal Saybolt at 100 degrees Fahrenheit, sulphur not over four-tenths per cent. The specifications then go [fol. 111] on to provide other technical details of the test required for this grade of oil. Grade "B" is defined as crude which does not meet the test for Grade "A". The same fields in South Louisiana produce Grade "A" and Grade "B" oils. Prior to the bringing in of the Yount-Lee well, shortly before the trial of the suit, there was no substantial amount of oil produced at Jennings that did not fall into the classification of Grade "A". This new well is in the same field with, and not far from, wells producing Grade "A" oil. There is a certain degree of uniformity of gravity of oils produced from the same sands, but gravity varies to some extent in the same field. It varies in the same sand slightly, from one to two or three degrees, and from one and a half to two degrees from the same well at different times. The present daily production of oil in the United States is around 2,800,000 barrels.

W. N. Finnegan, a witness for plaintiff, testified:

He is Assistant to the President of the Humble Oil Refining Company, and has been engaged in the oil business for 13 years. His company is engaged extensively in the production of crude oil and in its refining. It does not produce any crude in the Coastal section of Louisiana, nor buy any oil in Louisiana. Witness is familiar with the price of oil in the various fields. Gravity bears a relaton to value only in respect to paraffine-base oils, because gravity is an index to the proportion of gasoline obtainable from such oils by ordinary distillation. Gasoline is one of the lighter products of the oil, and is the one distilled at the lowest temperature. As between paraffine-base oils produced from entirely separate fields, there is no necessary relation between gravity and the proportion of recoverable gasoline. There are many different gravity price schedules of oils, there being one for the Mid-Continent district and various other gravity price schedules which differ in the various districts.

This is because the contents of the oil, and hence its recoverable products, differ. The fact that two crudes are of the [fol. 112] same gravity does not necessarily indicate that they have the same or approximately the same value or content. Paraffine-base crudes from the Mid-Continent area and the West Texas area of the same gravity are of considerable difference in value. The principal element of recoverable value in Coastal oils is, as respects "A" grade, lubricants, which value is in no manner indicated by gravity, but by viscosity. All oils produced in the Coastal area and not suitable for "A" grade purposes are classed as "B" grade. They are of mixed paraffine and asphalt base. Their most valuable recoverable product is gas oil, from which gasoline is obtained by the cracking process. The "B" grade oils differ largely in their recoverable content.

Cross-examination:

The witness' company purchases no oil in the Coastal section of Louisiana.

C. R. Minor, a witness for the plaintiff, testified:

He is Vice President of the Gulf Refining Company of Louisiana; has been in the oil business in Louisiana about 25 years, and for some years in the production and purchasing of oil in South Louisiana. At the present time he is in charge of the company's operations in Louisiana.

Gravity is an index of the relative value of oils of similar character, that is to say, having similar chemical components. It is not a general index, but only an index as to similar oils, being indicative only of the proportion of gasoline such oils will yield under distillation. Generally speaking, the higher the gravity the more gasoline may be expected to be yielded by oil by distillation.

The witness here referred to Bulletin 6114 of the Bureau of Mines, which was then and there offered in evidence by plaintiff, filed, and marked "Plaintiff D".

The gravity of oils varies in the same fields, and a par- [fol. 113] ticular tract of land does not always produce oil of a uniform gravity, it being sometimes though not frequently found that there is a material variation in the gravity of oils from the same sand. These variations some-

times also occur in the same well to the extent of one to four degrees Beaume gravity. This is also true as between wells drilled to the same sand. It is very frequent in the Louisiana fields to have wells on the same lease drilled to different sands at different depths producing oils of different gravities from the different sands. The principal value of Coastal "A" oil is aslubricant stock, that is to say, as a basis for the manufacture of lubricants. Gravity does not enter as a fundamental factor into the value of Coastal "A" oil, which sells uniformly at a flat price per barrel; whereas Grade "B" oil, which is not utilizable as lubricant stock, is usually purchased on a gravity schedule. Gravity does not enter at all into the market price of the oils produced in the Bellevue, Hosston and Urania fields of North Louisiana, nor into the price of oil produced in the Cotton Valley field from the shallow sands. Urania oil, produced in North Louisiana, is practically the same oil as Grade "A" Coastal.

Cross-examination:

Variations occur in the same field between wells very near each other in respect of the gravity of their product. This is true of practically all the fields in both North and South Louisiana. Variation in the gravity of oil from the same well usually occurs after the first or flush production. California has something like 20 different gravity price schedules, and in the remainder of the United States there are 11 or 12 different gravity price schedules. These schedules start at different points or degrees Beaume, and the grading is not uniform. In North Louisiana the gravity structure is practically the same as in use in the Mid-Continent area, starting, according to the witness' recollection, at 27 degrees Beaume for the low point. The oil in the [fol. 114] Cotton Valley field which is sold at a flat price has a gravity of 27 to 30 Beaume, the variation being of only a few degrees. As to the oil produced in Cotton Valley which is sold on a gravity basis, there is only a slight variation in gravity. This difference in the price structure in the Cotton Valley field is not due to transportation, but to the different chemical constituencies of the two kinds of oil. The greater portion of the oil produced in cotton Valley is of the class selling at a flat price, and is of a gravity ranging from 27 to 30 degrees Beaume.

At this point counsel for plaintiff, in connection with the offer previously made of the Oil Weekly, filed as Plaintiff's Exhibit "B", reoffered the same document, covering pages 128 and 130. These documents were then filed in evidence as Plaintiff's Exhibit "B".

Plaintiff then offered in evidence pages 44 and 46 of the Oil Weekly of June 14, 1929, which was filed in evidence and marked "Plaintiff E".

Whereupon plaintiff rested.

Counsel for defendant then offered the following evidence and witnesses:

Defendant offered in evidence the Eighth Biennial Report of the Department of Conservation of Louisiana, particularly pages 116 and 117, offering the whole report, but directing tne Court's attention particularly to the pages referred to. This was offered in evidence and marked "Conway 1".

J. R. HALL, a witness for defendant, testified:

That he is connected with the office of the Supervisor of Public Accounts of the State of Louisiana, and that he is personally familiar with the method and manner of transporting crude oils in the various fields of Louisiana. Oil from the Pine Island field and the Haynesville field is trans-
[fol. 115] ported by pipe line; that from Bellevue, by pipe line to Princeton, and from Princeton in tank cars of the L. & A. Railroad to Baton Rouge; oil from Haynesville, Cotton Valley, Caddo and Chrichton, by pipe line; from Urania, by tank cars from gathering lines and loading racks; from Jennings, by a short pipe line, whence it is loaded into barges and shipped to Port Arthur, Texas. The oil from the well recently brought in is shipped by tank cars. Oil is transported from Vinton and Edgerly entirely by pipe line. The same is true of the Stark's Dome field. The witness then identified certain pipe-line tariffs, which were offered in evidence, filed, and marked "Conway 3", "Conway 3-A," "Conway 4," "Conway 5," "Conway 6," "Conway 7" and "Conway 8." The tariffs are based on a barrel of oil of 100 pounds. It was then admitted,

subject to the objection of irrelevancy, that the railroad rates on oil from the Bellevue field per barrel were .338; from the Urania field, .496; and also that the barge-line rate from Jennings to Port Arthur is .165.

HUEY P. LONG, a witness for the defendant, testified:

He is Governor of Louisiana. Prior to his becoming Governor of Louisiana, he held the office of Railroad and Pipe Line and Telephone Commissioner, called part of the time Railroad Commission and the rest of the time Public Service Commission. He was also at that time in the oil business, and was attorney for oil producers. Witness testified that he produced oil in three or four fields in North Louisiana, and that he sold his oil at posted pipe-line prices.

Witness testified that all oil practically has been sold in Louisiana upon a gravity basis. At practically all times oils of 28 gravity and below have sold more or less for the same price, whether in North or in South Louisiana. Above 28 gravity, oils are sold on a gravity basis, and this statement is borne out by the quotations in the oil trade journals. There is nothing about the term "gravity" that is unintelligible; everybody in the oil business knows what it means. The price paid for oil is governed by the value of [fol. 116] the oil and the cost of transportation to the refinery. "As an example, you can take most of the oils of this State, add on the charges for transportation, and you will find that, generally speaking, the oil is more or less regulated by the refining point or its locating and distributing point." The witness testified that, as a general rule, prices are regulated by gravity and are so quoted in the trade journals. Here the witness refers to the Oil & Gas Journal, published in Tulsa, Oklahoma, with particular reference to its issue of June 13, 1929, wherein he states that practically every field in the United States is listed, and that oil is there quoted for purchase and sale on the gravity basis. Witness then refers to the Oil weekly, and states that it lists practically every field in the United States, quoting oils on a gravity basis. The witness says that the flat prices paid for oil in Bellevue, Urania, Jennings, Vinton, Edgerly and Stark's Dome are for oil under

28 gravity, and that all oils under 28 gravity bring a price almost uniform.

Beginning at about the year 1917, the Pine Island oil field was discovered in Louisiana. After that the Homer, Haynesville, Bellevue and Urania fields were discovered. At that time and at practically all times since, the oils from 28 gravity and below have all sold more or less around the same prices. For years the Jennings field, 20 to 23 gravity, sold at $1.30; Vinton field, around 19 to 23 gravity, about the same, $1.30; Edgerly, around 20 gravity, sold at $1.30; Stark's Dome, around 20 to 21 gravity, sold at $1.30. That is South Louisiana.

On the other hand, go to North Louisiana and get to Bellevue, and you find Bellevue, 19 gravity, sold at $1.30. The only difference in gravity there is within that same 19, 20, 21 point. After you pass the 28 gravity—there has been very little said on which oil has been based as to value in any field except strictly on a gravity basis. That you get from the Trade Journal and market that is posted from *toi* time to time. (These last two paragraphs inserted at defendant's request).

[fol. 117] The witness is familiar with railroad rates and pipe-line rates, and he wrote practically all the schedules of oil rates prevailing in Louisiana.

As to whether oil is sold at the well—if it is sold at the well, what one gets for his oil is the value of the oil taking into consideration its location. For instance, if one had 28 or 30 or 40 gravity oil within one mile of a refinery, where it is to be refined, it is worth more than oil within 300 miles of the refinery, with the same gravity. As an example, you can take most of the oils of this State, add on the charges for transportation, and you would find that generally speaking that oil is more or less regulated by the refining point, or its locating and distributing point.

There are other conditions sometimes that cause the rule to vary. For instance, oil concerns occasionally have such a thing as we call overproduction and the price will vary a little, but as a general rule the price will run as regulated on the gravity. The Oil Journal mentions the price of oil in certain fields, apparently on a flat basis, but in analyzing them, for instance, Bellevue crude is quoted at $1.30 instead of saying the gravity; the price on Urania crude, as

the witness recollects, is $1.00 today, and the price of Jennings, Vinton, Edgerly and Starks crude is $1.30, but analyzing the gravity of these fields, where they have stabilized the prices at a flat price, they are all under 28 gravity, every one of them without a single exception, and as a general rule even under 28 gravity they run almost uniform within one or two points. (The last two paragraphs above inserted on request of defendant.)

There is nothing in the statute under attack levying a higher tax on oil of a lower value than upon oil of a higher value. Witness says that the testimony about the difference between paraffine—and asphalt base oils "is considerably more of a myth than it is anything serious." Paraffine-base oils are valuable for lubricants, as evidence [fol. 118] of which the witness referred to Pennsylvania crudes, from which are extracted both gasoline and lubricating oil. Pennsylvania crude is a paraffine-base. There are very few low-grade oils from which gasoline cannot be profitably extracted by cracking process. This cracking process produces gasoline in a large percentage of the low-gravity oils which formerly, by old processes, never produced gasoline. Likewise, a higher percentage of gasoline can be extracted from the higher-gravity oils by cracking process than by simple distillation. Witness then refers to the Oil & Gas Journal and the Oil Weekly, which he says are consistent with each other in quotations, and points out that Coastal "A" oil is quoted at $1.30 per barrel, whereas Coastal "B" oil is quoted by a gravity schedule, beginning at 25 gravity and up. The witness testifies that in the Jennings, Vinton, Edgerly and Stark fields, where the flat price is $1.30 per barrel, he has been unable to find any instance where the gravity is not below 25. Witness says that transportation conditions and location of fields are considerable factors in the value of any oil.

The statute that is now under attack began to graduate the oil, place all oil on four cents per barrel up to 28 gravity, and graduate it above 28 gravity, which, the witness says, he presumes, would be considered fair. No discrimination can be found in the oils of North and South Louisiana based upon the tax schedule under attack. There might be a little exception pointed out, but the witness does not find where the lower value pays a lower tax than

the higher value. The witness constructed the frame of work of the statute under attack in this suit. The bill originally provided for 7½ cents tax per barrel on oil produced in the State. He was prevailed upon by the oil people that the difference in value between low and high gravity did an injustice, and thereupon a schedule was worked out so that it might accord more or less with the worth of the oil.

Speaking of Gulf Coast crude oil under the designation of Grade "A", it is quoted in the Journal at $1.30. When [fol. 119] the Journal speaks of Grade "B" it refers to the gravity table for value. The witness then says that going over to the crude oil gravity table, on the 13th day of June, 1929, which lists it Grade "B" and light oils, the table begins at 25 gravity and goes up to Grade "B" and light crudes, plainly indicating that it is a gravity basis. Not only that, but in the Jennings, Vinton, Edgerly and Starks fields, where the price is $1.30 on the oil varying in gravity from 19, 21 to 23 gravity, he has been unable to find any instance in these fields where the gravity is below 25, that they have found anything within that identical $1.30 grade crude.

(The last two paragraphs above inserted at defendant's request.)

Mrs. M. D. Carstarphen, a witness for defendant, testified:

She is connected with the Department of Conservation of the State of Louisiana, being in the office of the Director of the Mineral Division. The data shown on pages 116 and 117 of the Eighth Biennial Report of the Department of Conservation, showing oil production in the various fields of Louisiana, were compiled by her and are correctly set out in the report.

Cross-examination:

She likewise prepared the figures shown on page 123, of the said report from data furnished by oil companies, and believes them to be as correct as the other data appearing therein. In connection with the witness' testimony, coun-

sel for defendant then offered in evidence pages 116 and 117 of the said Eighth Biennial Report of the State Conservation Commission, to which offering counsel for plaintiff objected, on the ground that the report must be offered as a whole, which objection was overruled by the Court, which then stated that counsel for plaintiff would be permitted to offer any portion of said report.

SCOTT HEYWOOD, a witness for defendant, testified:

That he has been in the oil business for about 30 years, [fol. 120] and was a member of the firm that brought in the first oil field in Louisiana, at Jennings. He has also been in the oil business in Oklahoma and in Texas, and is now living in Jennings. Oils were first quoted on a gravity basis about 1922. Prior to that time, at least in the Jennings field, they were sold at flat prices. All of the oil produced from the Jennings field, except that from the Yount-Lee well, is Coastal "A," its gravity being around 23 and 24 Beaume. In the witness' opinion, no oil above 25 on the Gulf Coast is Grade "A." Witness says that no oil has been bought or sold in Louisiana since 1922 on any other basis than that of gravity. His production in Texas is in the Mid-Continent area, and has been sold on a gravity basis, beginning with 1928. Witness has had no experience in selling oil in Louisiana, except in the Jennings field. Witness does not know of any buyers of oil in Louisiana who purchase without knowing the gravity of the oil. All of the oil in Jennings is graded as Class "A", except in the Yount-Lee well, which came in only a short time before the trial, and is being sold on a gravity basis, the schedule starting at 25 gravity at $1.15 per barrel, and adding three cents for each point above that. Production from the Jennings field has declined very much in the last ten years. Its oil is moved by pipe line to the railroad, whence it is shipped either by tank cars or by barges. It was then admitted that the barge-line rate was .165 per barrel.

Cross-examination:

The quotations and statments in the Oil & Gas Journal are correct, except that the price paid at Jennings is $1.25

per barrel, instead of $1.15. The price was raised from $1.15 to $1.25 in the latter part of May.

W. H. LITTLETON, a witness for defendant, testified:

That he is an oil well contractor, and has been engaged in the shipping and producing of oil. Oil is all sold on [fol. 121] a gravity basis. So far as the witness knows, since 1922 all oil is sold on a gravity basis. The witness' practical experience has been that all oils that he handled were sold according to gravity test, and he knows of no company or operator not selling and buying on a gravity basis. The witness knows nothing at all about Gulf Coast oil.

Cross-examination:

The witness' operations have been confined to the Caddo, Red River, Cotton Valley and Homer fields, in North Louisiana. He has never produced any oil in Urania, in Bellevue, nor in the Coastal field.

P. A. COOLEY, a witness for the defendant, testified:

He has been in the oil business 43 years, in all branches of the business, in Pennsylvania, Virginia, North Carolina and Louisiana. The witness is one of the first refining people south of the Ohio River; was connected with the Standard Oil Company 11 years, from 1886 to 1897. He is an associate of Mr. Littlejohn, the previous witness. The witness knows of no oil transactions in the buying and selling of crude oil on other than a gravity basis. Never in his life has he ever bought oil in any other way than on a gravity basis. He knows of no company or individual who is now buying or selling oil on any other basis. Witness is still in the refined oil business, but does not refine any oil himself, buying his refined products and jobbing them. Witness also sells crude oil to the pipe line. The price paid to the producer is at the well. The refiner pays the transportation to the refinery.

Cross-examination:

The witness has purchased oil in the Caddo field and in the light-oil district of Texas. When he was running a refinery, he bought Coastal oil of a gravity around 21 and [fol. 122] 22, but found that he could not use it to advantage for gasoline or kerosene, this being before the discovery of the cracking process. Thereafter the witness bought his oil from fields producing light oil, mostly from Caddo. Witness says that he sold oil on a gravity schedule in the Pine Island field in 1919 and 1920.

Redirect examination:

The depth from which the oil comes has no relation to and is not reflected in its gravity.

Whereupon counsel for defendant offered in evidence copy of the Oil & Gas Journal from which Governor Long and Mr. Heywood had testified; that is to say, copies of said paper dated March 17 and June 13, 1929, particular reference being made to pages 138 and 139 of the first number and page 141 of the second.

In rebuttal, and under the previous ruling of the Court, counsel for plaintiff then offered in evidence the report of the Division of Mines, William F. Chisholm, Director, contained in the Eighth Biennial Report of the Department of Conservation of Louisiana for the years 1926-1928, with particular reference to the data shown on page 123 thereof.

Whereupon both parties rested.

IN UNITED STATES DISTRICT COURT

ORDER APPROVING STATEMENT OF EVIDENCE

The above statment of the evidence approved this 9th day of October, 1929.

(Signed) Rufus E. Foster, United States Circuit Judge, Presiding.

Approved:

(Signed) E. L. Herold, for Pltff. (Signed) Percy Saint, Attorney General.

[fol. 123] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE—Filed August 27, 1929

The Clerk will please make up the transcript of appeal in the above entitled and numbered cause, including therein the following, to wit:

1

Verified bill of complaint and order thereon.

2

Answer of defendant.

3

The motion to substitute E. A. Conway for W. N. McFarland as defendant and the order directing such substitution.

4

The order directing issuance of preliminary injunction.

5

The injunction bond and order approving same.

6

The writ of injunction and return thereon.

7

The opinion of the Court on final hearing.

8

The final decree.

9

The condensed and narrative statement of the evidence.

10

The exhibits offered and filed in evidence by plaintiff and [fol. 124] by defendant.

11

The assignment of errors.

12

The petition for appeal and the order allowing same.

13

The appeal bond and the order approving same.

14

The minutes of the Court.

15

Citation of appeal and return.

16

This præcipe.

(Sgd.) S. L. Herold, S. P. Cousin, A. L. Benoit, Solicitors for Complainant.

I hereby certify that on this the 22nd day of August, 1929, I mailed a true copy of the foregoing præcipe to Hon. Percy Saint, Attorney General of Louisiana, addressed to his office, Courthouse Building, New Orleans, Louisiana.

(Sgd.) S. P. Cousin, of Counsel for Complainant.

[fol. 125] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 126] Citation, in usual form showing service on E. A. Conway, filed August 21, 1929, omitted in printing.

[fol. 127] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER EXTENDING TIME—Filed in Supreme Court Sept. 17, 1929

In the above styled and numbered cause, comes now The Ohio Oil Company, the complainant and appellant, and shows the Court:

1

That citation of appeal herein was signed on August 20, 1929, and is returnable not exceeding thirty days from said date.

2

That, in accordance with the rules, appellant presented its narrative statement of the testimony to the Court for approval on Monday, September 9, 1929, and when this matter came before the Court appellee presented certain objections and additions thereto; and that the Court then gave certain directions to appellant to enable its counsel to meet the objections and supply the additional matter required by appellee.

3

That, owing to the brief period of time which remains, the appellant needs an enlargement of the time within which it is required to docket the case and file the record with the Clerk of the Supreme Court of the United States.

Wherefore mover prays that it be granted additional time within which to docket this cause and file the record thereof with the Clerk of the Supreme Court of the United States.

S. P. Cousin, S. L. Herold, R. L. Benoit, Solicitors for Appellant.

[fols. 128 & 129] Order

The foregoing motion being considered, and the Court being advised in the premises, it is ordered that the time for docketing this cause and filing the record thereof in the

Supreme Court of the United States, pursuant to the appeal sued out herein, be and the same is hereby extended until the 20th day of October, 1929.

Done and signed at New Orleans, Louisiana, on this 13 day of September, 1929.

Rufus E. Foster, United States Circuit Judge.

I hereby certify that a true copy of the foregoing was this day mailed to Honorable Percy Saint, Attorney General of Louisiana and counsel of record for the defendant in this cause.

Shreveport, Louisiana, September 11, 1929.

S. P. Cousin, of Counsel for Complainant-Appellant.

[fol. 130] [File endorsement omitted.]

[fol. 131] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Oct. 24, 1929

Comes now the appellant, and states that it intends to rely upon each and all of its assignments of error; and, complying with the rule of this Honorable Court, states that it intends to argue such specifications under the following points, to wit:

Point I

Act 5 of 1928 of the Louisiana Legislature is void because it denies plaintiff the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

(a)

The statute in question operates a systematic and oppressive discrimination against appellant.

(b)

The discrimination effected by the statute rests upon no reasonable basis of classification.

Point II

Act 5 of 1928 of the Louisiana Legislature is void as in conflict with Section 21 of Article X of the Constitution of Louisiana, in that:

(a)

The severance tax imposed by the statute in question is levied neither according to quantity nor to value.

[fol. 132] (b)

Whatever of classification is attempted by the act is arbitrary and unreasonable.

And the appellant further designates the whole of the record as filed as necessary for the consideration of the case.

S. L. Herold, S. P. Cousin, R. L. Benoit, Counsel for Appellant.

State of Louisiana,
Parish of Caddo:

Before me, the undersigned authority, on this day personally came and appeared S. L. Herold, to me well known, who, being by me first duly sworn, did depose and say: that he is the counsel of record for the appellant; and that he has this day mailed a copy of the foregoing points to be relied upon and designation of the parts of the record to be printed to Hon. Percy Saint, Attorney General of the State of Louisiana, as counsel for the appellee.

S. L. Herold.

Sworn to and subscribed before me this 21st day of October, 1929. Eugene Harding, Notary Public, Caddo Parish, Louisiana. (Seal of Eugene Harding, Notary Public, Caddo Parish, La.

[fol. 133] [File endorsement omitted.]

Endorsed on cover: File No. 34,571. E. Louisiana D. C. U. S. Term No. 440. The Ohio Oil Company, appellant, vs. E. A. Conway, Supervisor of Public Accounts of the State of Louisiana. Filed October 14, 1929. File No. 34,571.

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

OHIO OIL COMPANY,

Plaintiff, Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA,

Defendant, Appellee.

JOINT MOTION TO ADVANCE.

S. L. HEROLD,
Counsel for Plaintiff, Appellant.

PERCY SAINT,
Attorney General of Louisiana,
Counsel for Defendant, Appellee.

MONTGOMERY-ANDREWS PRINTING CO. INC., 430-432 CHARTRES, N.O.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No._____

OHIO OIL COMPANY,

Plaintiff, Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA,

Defendant, Appellee.

JOINT MOTION TO ADVANCE.

To the Honorable the Supreme Court of the United States:

In the above styled and numbered cause, now come the Ohio Oil Company, plaintiff and appellant, through its counsel of record, and E. A. Conway, Supervisor of Public Accounts of the State of Louisiana, defendant and appellee, through the Attorney General of Louisiana, and respectfully move that this cause be advanced for early hearing, and, in support of this motion, makes the following brief

statement of the matter involved and the reasons relied upon for the advancement:

(1)

That this is a suit brought by the appellant in the District Court of the United States for the Eastern District of Louisiana in which it seeks to restrain the enforcement of a statute of the State of Louisiana which imposes and provides for the collection of a severance tax, the proceeds of which is deposited in the State Treasury and dedicated to public purposes, and which Act appellant contends denies to it the equal protection of the laws guaranteed to it by the Fourteenth Amendment to the Federal Constitution, and also violates Section 21 of Article X of the State Constitution.

(2)

That this Honorable Court, in suit No. 514 of the docket of this Court, reversed a decree of the three-judge court which refused to issue a temporary injunction, and ordered the lower Court to issue a temporary injunction under certain terms and conditions, which decision is reported in the Advance Opinions of the Supreme Court of the United States, of date March 15, 1929, and in *73 L. ed.* —.

(3)

That since the rendition of said judgment a final hearing has been had before the three-judge court in which the constitutionality of the Act was sustained, and the preliminary injunction theretofore issued was recalled and

set aside, the writ of injunction prayed for denied, and plaintiff's bill dismissed. From this final judgment and decree the Ohio Oil Company has appealed.

(4)

That this suit affects the revenues of the State, and it is of great importance to the State and to the appellant that a hearing of the cause be had as early as possible.

WHEREFORE, appellant and appellee jointly move that this cause be advanced for hearing at the earliest practicable date.

Respectfully submitted,

S. L. HEROLD,
Counsel for Plaintiff, Appellant.

PERCY SAINT,
Attorney General of Louisiana,
Counsel for Defendant, Appellee.

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CHARLES ELMORE
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA,

Appellee.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

JURISDICTIONAL STATEMENT FOR APPELLANT.

S. L. HEROLD,
S. P. COUSIN,
R. L. BENOIT,
Solicitors for Appellant.

MONTGOMERY-ANDREE PRINTING CO. INC...430-432 CHARTRES, N.O.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA,

Appellee.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

JURISDICTIONAL STATEMENT FOR APPELLANT.

This is an appeal from a decree on final hearing dissolving the preliminary injunction directed by this Court on March 5, 1929 *(Ohio Oil Company v. Conway, 279 U.S., 813, No. 514, October Term, 1928)*. The decree here ap-

pealed from was signed and entered on August 9, 1929 (R._____). This appeal was allowed, and the injunction continued in effect pending the appeal, by order of the three-judge Court on August 20, 1929 (R._____).

This Court has already held that it had jurisdiction of the appeal from the order refusing the preliminary injunction, under Section 380, Title 28, of the United States Code. The present appeal being from the judgment rendered on final hearing in the same cause, the same statutory provision vests jurisdiction in this Court.

Respectfully submitted,

S. L. HEROLD,
S. P. COUSIN,
R. L. BENOIT,
Solicitors for Appellant.

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CHARLES ELMORE CR

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA.

ORIGINAL BRIEF FOR APPELLANT.

S. L. HEROLD,
SUMTER COUSIN,
R. L. BENOIT,
Attorneys for The Ohio Oil Co., Appellant.

MONTGOMERY-ANDREW PRINTING CO., INC., 440-442 CHARTRES, N. O.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA.

ORIGINAL BRIEF FOR APPELLANT.

The opinion of the court below will be found reported in *34 Fed. (2nd) 47* (R. 65, *et seq.*)

The case was before this Court at its last term on appeal from a decree refusing an interlocutory injunction. The Court then *(279 U. S. 813)* reversed the decree appealed from, with direction to the District Court to issue an interlocutory injunction on terms. That injunction was accordingly issued (R. 20).

This appeal is from a decree dismissing plaintiff's bill on final hearing. That decree was rendered on August 9, 1929 (R. 70), and supersedeas was allowed on August 20, 1929, with continuation of the injunction pending the appeal (R. 71).

That this Court has jurisdiction of the present appeal is clear *(Section 380, Title 28 of the United States Code)*, since the jurisdiction of the District Court was invoked to enjoin the operation of a State statute as violative of the equal-protection clause of the Fourteenth Amendment (R. 6, 7).

STATEMENT OF THE CASE.

This suit is to prevent the enforcement against the plaintiff of a statute of Louisiana (Act 5 of 1928), amending a prior statute (Act 140 of 1922), imposing a severance tax upon the production of oil as a natural product of the soil. The prior act fixed the tax at three per cent of the market value of the oil at the time and place of severance[1]. The amendatory act marked a radical departure from the practice theretofore in force in Louisiana and in the other States[2] by the imposition of a tax ranging from four to eleven cents per barrel, upon a schedule based upon no other standard than that of gravity or comparative weight.

For the purposes of this tax the statute[3] divides all oils produced within the State into six classes, in which

---

(1) See Gulf Refining Co. v. McFarland, 154 La., 251, 264 U. S. 573.
(2) See Appendix, page 53.
(3) See Appendix, page 47.

classification no account is taken of any property of the oil except its gravity, and imposes taxes upon each as follows:

4 cents on all oil of 28 degrees gravity or below;
4¼ cents on oil over 28 and not over 31 gravity;
5 cents on oil over 31 and not over 32 gravity;
8 cents on oil over 32 and not over 36 gravity;
10 cents on oil over 36 and not over 43 gravity; and
11 cents on oil above 43 degrees gravity.

As applied to the plaintiff's operations, the increase in its tax resulting from the amendatory act for the eight months subsequent to the effective date of the statute was 110 per cent, or $26,954.19 (R. 39). The net result of the act is to impose widely varying burdens upon producers of oil in different sections of the State; the rate of tax upon the plaintiff, in North Louisiana, being twice that exacted of producers of oil in South Louisiana (R. 68), whose taxes are raised on an average of less than 10 per cent.

While admitting the validity of the prior act and declaring its willingness and readiness to pay the tax imposed thereby, the plaintiff alleges that the changed and enlarged tax imposed by the amendatory act is invalid, in that the act, as applied to the plaintiff's operations, contravenes the equal-protection clause of the Fourteenth Amendment to the Constitution of the United States, and also a provision of Section 21 of Article X of the Constitution of Louisiana requiring that severance taxes be predicated upon either the quantity or value of the product at the time and place of its severance.

In its former opinion *(279 U. S. 813)* this Court disposed of the application for an interlocutory injunction

on the ground that the constitutional questions involved depended upon controverted questions of fact:

> "The application for an interlocutory injunction was submitted on *ex parte* affidavits, which are harmonious in some particulars and contradictory in others. The affidavits, particularly those for the defendant, are open to the criticism that on some points mere conclusions are given instead of primary facts. But enough appears to make it plain that there is a real dispute over material questions of fact which cannot be satisfactorily resolved upon the present affidavits, and yet must be resolved before the constitutional validity of the amendatory statute can be determined."

These questions of fact were directly presented through the issue tendered by the bill (R. 6, 7) and categorically denied in the answer (R. 14) that the statute effected a discrimination against the plaintiff in favor of other producers similarly situated; and through the further allegation that such discrimination was the direct and proximate result of the standard or basis of classification adopted by the statute (R. 6, 7), which the answer (R. 14) denies. Indeed, the answer goes farther and in detail attempts to show (R. 15) that taxation according to gravity is substantially a tax according to value.

It was upon these questions that the statements in the affidavits before the Court on the former hearing were contradictory, thus presenting issues of fact which the Court held necessary to be resolved by evidence.

Upon these issues the case went to trial in the District Court, and upon them oral testimony was heard and

a large volume of documentary evidence introduced. Of the evidence, oral and documentary, it may fairly be said that no serious dispute exists upon these two material questions of fact.

While the judgment of the District Court dismissed the bill, that court did find as facts:

> *First*, that the tax levied upon the plaintiff in respect of oil produced by it, ranged from 60 to 100 per cent more (R. 68) than the tax imposed upon other producers;
>
> *Second*, that gravity "has a definite relation to value of oil of comparatively the same properties" (R. 69).
>
> *Third*, that there are oils of higher gravity which are worth less, though taxed higher, than other oils of lower gravity (R. 67, 68), thus demonstrating that gravity is not a common index of comparative values;

Despite which findings of fact the court sustained the statute, upon the grounds (R. 69):

First, that "the tax need not operate equally throughout the State, provided it is equal as to all persons within a particular district;"

Second, that "gravity is one means of identifying all oil, is universally used by the trade, and has a definite relation to value in oil of comparatively the same properties;"

Third, that the inequality of taxation resulting from the statute "does not render the classification made by Act 5 of 1928 so unreasonable as to infringe the Fourteenth Amendment;"

Fourth, that the law is not "intentionally discriminatory, and the tax bears equally upon all persons producing the same quality of oil."

From the decree rendered pursuant to that opinion, this appeal is prosecuted.

ASSIGNMENT OF ERRORS.

It is assigned as error (R. 71) that the District Court erred:

(1)

In holding that Act No. 5 of the Louisiana Legislature of 1928 is not violative of the provisions of Section 21 of Article X of the Louisiana Constitution, requiring severance taxes to be predicated upon either quantity or value.

(2)

In holding that Act 5 of 1928 of the Louisiana Legislature is not void in denying to complainant the equal protection of the laws, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(3)

In holding that the severance tax imposed by Act 5 of 1928 is levied according to quantity.

(4)

In holding that the classification by gravity attempted by said Act 5 of 1928 is not unreasonable and arbitrary.

(5)

In not holding that gravity is no indicium of relative value, utility or content with respect to the oils produced in Louisiana generally, and therefore is entirely an arbitrary method of classification.

(6)

In holding that a classification of oil for the purpose of the imposition of severance taxes at varying specific rates is permissible under Section 21 of Article X of the Constitution of Louisiana.

(7)

In not holding that the basis of classification attempted by said Act 5 of 1928, namely the gravity of the oil produced, necessarily results in an arbitrary, unreasonable and oppressive discrimination against this complainant.

(8)

In not holding that the classification of all oil produced in Louisiana according to gravity and the imposition of different specific taxes upon each such attempted class is justified by no ground of difference bearing a reasonable and just relation to the equal protection of the laws guaranteed by the Fourteenth Amendment.

(9)

In not holding Act 5 of 1928 to be void, as violative of the Fourteenth Amendment, because of the proof that its system of imposition of severance taxes upon oil is of

such character that substantial equality will not result from its operation.

(10)

In not holding the method of graduation of specific taxes upon crude oil of different gravities by Act 5 of 1928 to be so unreasonable as necessarily to result in arbitrary discrimination which particularly affects the plaintiff.

(11)

In not holding that the discriminations effected by Act 5 of 1928 were and are intentional.

(12)

In holding that the Legislature may, consistently with the equal-protection clause of the Fourteenth Amendment to the Constitution of the United States, impose severance taxes upon producers of oil in North Louisiana (where plaintiff operates exclusively) substantially greater than upon those engaged in the identical business in South Louisiana.

(13)

In not holding the provisions of said Act 5 of 1928 imposing a severance tax on oil to be violative of the Fourteenth Amendment to the Constitution of the United States, in view of the proof that the plaintiff is thereby subjected to a burden of taxation excessive and unreasonable as compared with that levied upon other persons engaged in the same occupation, as the direct result of the

varying of the tax according to arbitrary standards fixed in said act.

STATEMENT OF POINTS TO BE RELIED UPON.

As required by paragraph 9 of Rule 11, the appellant has here filed (R. 101) its statement of points to be relied upon, condensing and summarizing its specification of errors:

POINT I.

Act 5 of 1928 of the Louisiana Legislature is void because it denies the plaintiff the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

(a)

The statute in question operates a systematic and oppressive discrimination against appellant.

(b)

The discrimination effected by the statute rests upon no reasonable basis of classification.

POINT II.

Act 5 of 1928 of the Louisiana Legislature is void as in conflict with Section 21 of Article X of the Constitution of Louisiana, in that:

(a)

The severance tax imposed by the statute in question is levied neither according to quantity nor to value.

(b)

Whatever of classification is attempted by the act is arbitrary and unreasonable.

SUMMARY OF ARGUMENT.

(1)

The proof clearly establishes that the direct and necessary effect of the statute is a gross discrimination against the plaintiff in its burden of taxation as compared to others in the same business. This also appears in the findings of fact of the lower court (page 12).

(2)

The record likewise establishes that gravity has relation to value or quality only as between similar oils of substantially similar composition. This also appears from the findings of fact of the District Court (page 20).

(3)

The classification under the statute, resting not upon quality or composition of the oil, nor upon its utility or value, nor upon any basis other than that of weight, is therefore unreasonable and arbitrary (page 26).

(4)

The classification adopted by the statute necessarily effects a clear and hostile discrimination against the complainant, because of the arrangement of its schedule and of the rates thereunder levied (page 33).

(5)

Settled principles, established by decisions of this Court, compel the conclusion that the judgment of the District Court is erroneous under the facts as found by that court (page 40).

(6)

The statute in controversy is violative of Section 21 of Article X of the Constitution of Louisiana, in that the tax is levied neither according to quantity nor to value, and rests upon an arbitrary classification (page 43).

ARGUMENT.

POINT I.

Act 5 of 1928 is void, because it denies the plaintiff the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

(a)

The statute operates a systematic and oppressive discrimination against the appellant.

The facts, as conclusively proved on the final hearing, corroborate in every particular the statements made in the affidavit furnished on behalf of the plaintiff on the rule for an interlocutory injunction. No serious effort was made to combat this proof. The District Court finds as a fact (R. 68) a variation in the tax burden imposed

upon producers of oil within the State, to the prejudice of the plaintiff, of 100 per cent. This finding only touches the actual facts. The witnesses for both sides concede the correctness of the prices quoted in the trade journals offered in evidence (R. 53, 54, 63, 64, 79, 80 and 81). Indeed, the exhibit shown on pages 53 and 54 is made part of the answer of the defendant in this case (R. 16). The quotations shown in this exhibit (R. 54), taken in connection with the statement as to the oils produced by the plaintiff (R. 22 to 38), show that the tax levied upon the plaintiff, under the schedule of prices then existing, was as follows:

The Ohio Oil Company produced in the Haynesville field oil of gravity ranging from 33 to 36. Such oil was quoted at an average price of $1.22. It was taxed at the rate of 8 cents per barrel, or at the rate of over 6½ per cent of its value.

It produced oil in the Cotton Valley field, practically all of which fell into two classes: the first between 28 and 31 gravity, selling at $0.75 a barrel, on which the tax was 4¼ cents, or 5⅔ per cent; the second above 43 gravity, selling at $1.76 per barrel, on which the tax was 11 cents, or a fraction over 6 per cent.

It produced in the Pine Island field, in Caddo Parish, oil from 37 to 41 gravity, quoted at an average price of $1.34, and taxed at 10 cents a barrel, or almost 7½ per cent.

It produced in the Urania field oil of a gravity below 28, selling at a flat price of $0.75 a barrel, and taxed at 4 cents, or 5⅓ per cent.

On the other hand, producers of oil in the Vinton, Edgerly and Stark's Dome fields sold their oil (all of which was below 28 degrees in gravity) at a flat price of $1.30, on which they paid a tax of 4 cents a barrel, or 3.1 per cent. Likewise, the producers in the Bellevue field sold their oil at a flat price of $1.25, paying a tax of 4 cents a barrel, or 3⅓ per cent; while those in the Jennings field marketed their oil at $1.15 a barrel, paying a tax of 4 cents, or a fraction less than 3½ per cent. And it likewise is true that, with respect to the other fields of South Louisiana not quoted in the exhibit mentioned, the prices, the tax and the rate of taxation were substantially the same. See Exhibit "B", insert between pages 42 and 43. The official report of the Louisiana Conservation Commission (R. 52) shows that these fields produced in 1928 nearly one-third of the oil of the State.

As a consequence it is undisputed that, while, under prices prevailing at the date of the filing of the suit, plaintiff was taxed upon its production at from 5⅓ to 7½ per cent, the producers of nearly one-third of the oil in Louisiana were taxed at less than 3.5 per cent.

The same degree of discrimination is shown by the prices quoted in the trade journals in the transcript as prevailing at other dates.

The record also contains other evidence in official form, not disputed by either side, from which it is demon-

strated that the gross inequality shown to have existed at the date of the filing of the suit and at the date of the trial was in no sense a sporadic, accidental or occasional one, but a necessary and direct result of the system adopted by the statute under attack. The report of the Conservation Commission of Louisiana (R. 49) gives the average prices of oil prevailing throughout the years 1924, 1925, 1926 and 1927 and at the date of the report, February 21, 1928. As illustrative of the plain discriminatory effect of the statute, we exhibit here calculations showing the rate of tax that would have been imposed upon this plaintiff had Act 5 of 1928 been in effect throughout those years, as well as the rate of tax that would have been imposed upon producers of oil in other fields in Louisiana.

1924:

The Ohio Oil Company would have paid:

Upon its Caddo production.....6.4 per cent;
Upon its Haynesville production....5.8 per cent;
Upon its Cotton Valley production..5.7 per cent;

whereas the producers of coastal oil, all of which is of a gravity much lower than that prevailing in any of the fields above mentioned, would have paid 2.5 per cent.

1925:

The Ohio Oil Company would have paid:

On its Caddo production.....5.1 per cent;
On its Haynesville production.....5.0 per cent;
On its Cotton Valley production....4.6 per cent;

whereas the producers of coastal oil would have paid 2.4 per cent.

1926:

In spite of the fact that in this particular year prices of high-gravity oil reached their peak, plaintiff would have paid:

On its Caddo production.....4.5 per cent;
On its Haynesville production.....4.1 per cent;
On its Cotton Valley production....4.1 per cent;

while producers of Coastal "A" oil would have paid 2.6 per cent, and on other grades of coastal oil the tax would have ranged from 2.5 to 2.9 per cent.

1927:

The Ohio Oil Company would have paid:

On its Caddo production.....5.9 per cent;
On its Haynesville production.....5.8 per cent;
On its Cotton Valley production, a fraction over 5 per cent.

All producers of oil in the coastal fields of South Louisiana, however, would have paid on "A" grade oil 3.1 per cent, and on the remainder at rates running from 3.0 to 3.2 per cent.

1928:

On February 21, 1928, The Ohio Oil Company would have paid:

On its Caddo production.....6.5 per cent;
On its Haynesville production.....6.8 per cent;
On its Cotton Valley production...6 2/3 per cent.

At that date producers of coastal "A" oil would have paid 3.3 per cent, and on the remaining grades of Coastal oil a

practically uniform burden of 3.4 per cent would have been imposed.

Based upon an average of the prices prevailing during the whole of these periods, the plaintiff would have paid:

On its Caddo production.....5.7 per cent;
On its Haynesville production.....5.4 per cent;
On its Cotton Valley production....5.1 per cent.

The average burden for such period upon producers of coastal oils would have ranged from a fraction under 2.8 per cent on Coastal "A" and 3.2 per cent on Coastal "B" to a practically uniform burden of 3 per cent on coastal light oils.

Thus it will be seen that the proof as to the burden upon producers of oil in the Caddo, Haynesville and Cotton Valley fields for the entire period covered by this report, as compared with that upon the producers of Coastal "A" oil, shows practically the same proportion of discrimination as that which existed for the period between the effective date of the statute and the date of the trial, to-wit, a tax upon the plaintiff of 100 per cent more than that imposed upon its competitors in the coastal fields.

In these calculations we have omitted Urania, because of the fact that it began to produce only in 1926, but the tax upon the plaintiff as a producer of that oil (similar in every respect to Coastal "A" oil) (R. 79, 89) would have ranged from 3.1 per cent in 1926 to 4.3 per cent in

1927 and 5 1/3 per cent on February 21, 1928, as compared with 2.6 per cent in 1926, 3.1 per cent in 1927 and 3.3 per cent on February 21, 1928, on oil identical with it in gravity and composition produced in the coastal fields.

The Bureau of Mines, in its "Information Circular 6114," entitled "Survey of Gravities of Domestic Crudes" (R. 63, 64), has compiled a statement disclosing the market prices of oils produced in the various Louisiana fields on the first day of July in the years 1926, 1927 and 1928, together with the gravity of each of such oils. If Act 5 of 1928 had been in effect at these dates, the rate of tax that would have been imposed upon the complainant would have been as follows:

July 1, 1926:

Caddo production ..... 4.0 per cent;
Haynesville production ..... 3.9 per cent;
Cotton Valley production ..... 3.5 per cent;

whereas the burden upon the producers of coastal oils would have been only 2.5 per cent. The rate of tax upon Urania oil would have been 3.4 per cent.

July 1, 1927:

The Ohio Oil Company would have been taxed:

On Caddo production ..... 7.3 per cent;
On Haynesville production ..... 7.3 per cent;
On Cotton Valley production ..... 4.25 per cent;
On Urania production ..... 4.0 per cent.

Producers of Coastal "A" oils would have paid 3.3 per cent; producers of other coastal oils 3.4 per cent.

July 1, 1928:

The Ohio Oil Company would have paid:

On Caddo production.....7.1 per cent;
On Haynesville production.....6.4 per cent;
On Cotton Valley production.....5.7 per cent.

Producers of Coastal "A" oil would have paid 3.3 per cent, and producers of other coastal oil 3.4 per cent. On its Urania production plaintiff would have paid 5.3 per cent.

So that, taking a range of years, we find uniformly resulting from the application of the schedules of Act 5 of 1928 a discrimination of a most peculiar and unusual character against operators in the Caddo, Haynesville and Cotton Valley fields in respect of the burden imposed upon them, as compared with that imposed upon other persons engaged in identically the same occupation in other portions of the State.

It therefore is clear that this plaintiff (in a business established long before the passage of the statute), in the parishes of North Louisiana, wherein it has investments totaling many millions of dollars (R. 75), is compelled to pay a tax 100 per cent higher than that exacted of other persons following the same occupation in other portions of the State; or, to state it conversely, persons and corporations in South Louisiana, in competition with the plaintiff in the same business, are taxed upon their oil, or upon its severance from the soil, one-half of what the State exacts from the plaintiff for pursuing the same occupation.

This fact, proved without attempted contradiction, furnishes the answer to the first question of fact upon which this Court remanded the case for trial.

And it is clear under the decisions that, if such discrimination is not a casual or accidental result of the operation of the act, but is its direct and necessary effect, the act denies the equal protection of the laws, guaranteed by the Federal Constitution to all of the citizens of each State.

That right is one of substance; it cannot be denied by technical manipulation or by any mere form of words; it does not admit of partial application; it is coextensive with the boundaries of the State. And that right, having the sanction of the organic law, cannot be taken away from the citizen by any legislative fiat or by the mere use of the term "classification."

(b)

The discrimination effected by the statute rests upon no reasonable basis of classification.

Since the differentials in the tax exacted by the statute rest upon a classification based entirely upon the gravity of the oil, the question is whether the record shows such classification unreasonable.

I.

A tax according to gravity is unreasonable and arbitrary.

The term "gravity" as used in the oil business is the converse of specific gravity; that is to say, the Beaume gravity scale, referred to by the statute, is a measure of lightness rather than of weight, the gravity increasing as the weight decreases (R. 66).

Crude petroleums in general are of three kinds; those having a paraffine base, those having an asphalt or naphthene base, and those with a mixed base. The only paraffine-base oil produced in Louisiana is in the northern portion of the State. South Louisiana produces principally asphalt-base crude, with some mixed-base; while North Louisiana produces, besides paraffine-base oils, also asphalt-base and mixed-base petroleums (R. 77, 85, 86; see also R. 48, 63, 64).

In the year 1928, according to the figures furnished by the Louisiana State Department of Conservation (R. 52), the production of oil in Louisiana was, in round figures, 22,000,000 barrels, of which a fraction over two-thirds was produced in North Louisiana and a little under one-third in South Louisiana. Deducting from the North Louisiana production that of the Bellevue, Elm Grove and Urania fields, shown by the record (R. 78) to be of asphalt base, and without any allowance for the mixed-base oils of the Pine Island field in Caddo Parish (R. 78), these statistics show that the paraffine-base oils constituted very little over one-half of the total amount of oil extracted in the State.

Figures in evidence and undisputed (plaintiff's Exhibit "B", inserted between pages 42 and 43; also see R. 83) show that less than two-thirds of the oil produced in North Louisiana at the date of the trial was sold on a gravity basis, and over one-third at flat prices unaffected by gravity; while in South Louisiana more than half of the production fell into Grade "A" and a little less than half into Grade "B", the former selling entirely at flat prices, the latter partly at flat prices and partly on a gravity schedule

(see R. 141) entirely different from the schedule in effect as to light oils produced in the fields of North Louisiana.

Prior to the discovery of the process of cracking oil, the asphalt-base crudes were used almost entirely for the manufacture of lubricants and the residuum for fuel oil; but now, as stated by the District Court, gasoline is extracted from them by the process known as cracking (R. 66). The paraffine-base crudes have always been used for the distillation of gasoline, kerosene and the lighter petroleum products (R. 66). And though gasoline and kerosene may be extracted from any of the crudes produced in Louisiana, the asphalt-base crude known as Grade "A" has a peculiar value for the manufacture of lubricants (R. 66). This value of asphalt-base oil as a lubricant base is measured, not by gravity, but, as stated by the District Court, by viscosity and freedom from sulphur content (R. 67); the proof showing that, as a matter of fact, the value for lubricant stock tends to increase as gravity decreases (R. 79, 81).

Paraffine-base oils contain usually a large proportion of gasoline recoverable by simple distillation (R. 77), the lightness of this kind of oil being due to the presence of the free gasoline and other lighter products (R. 47, 85, 87). The record leaves no doubt that the adoption of the gravity system for the quotation of prices of paraffine-base oils is due primarily, if not entirely, to the fact that, roughly, the gravity, as between paraffine-base oils produced in the same field, indicates the percentage of gasoline recoverable by distillation (R. 77, 78, 79, 85, 87, 88). But, as between paraffine-base oils from different districts or

from different sands, gravity is not an index of relative gasoline content (R. 78, 85, 87, 88). The fact that two oils are of the same specific, or the same Beaumé, gravity does not indicate that they are of equal value or of comparatively equal gasoline content, because one oil may be practically uniform in its aggregates, while another may be a combination of a heavier and a lighter oil. This commonly occurs, and in such case the two crudes will yield different products, resulting in radically different values (R. 78).

In the circular No. 6114 of the Bureau of Mines, of date April 9, 1929 (R. 45 *et seq.*), it is said:

> "In general, the higher the gravity the higher the gasoline yield. However, no definite rule can be laid down as to the increment to be expected in gasoline percentage recovery for each degree rise in gravity. This is because of differences in chemical composition which, in addition to affecting gasoline recovery by means of its relation to gravity, also exerts an effect which is distinct from gravity. * * * The gravity basis as now used by the crude buyers in most fields is an attempt to make allowance for the higher gasoline content of high-gravity crudes, * * *"

This is recognized by the District Court (R. 67) in its finding that "gravity * * * has a definite relation to value in oil of comparatively the same properties."

Conclusive evidence that gravity is of importance only as between oils produced from the same fields or districts, and therefore of the same origin and composition, is afforded by the price quotations contained in the record.

For example, the quotations in the Oil Weekly of May 25, 1928 (R. 53 *et seq.*), which are referred to and made part of the answer of the defendant in this case (R. 16), show that in many fields oil is sold at flat prices unaffected by gravity, but that, where a gravity schedule is used, there is a different gradation in price in each particular district, 18 different gravity schedules prevailing in California alone. The prices current at the time of the trial, shown by the quotations (R. 63 *et seq.*), disclose 20 different gravity schedules for California, 6 different gravity schedules for Texas, a number of other gravity schedules for other sections of the country, the pricing of oils in the various fields of the eastern and central States by flat prices in each field unaffected by gravity, a flat price on Gulf Coastal "A" oil, a gravity schedule on Gulf Coast light oil entirely different from that in force in North Louisiana, and the latter schedule confined entirely to the Homer, Haynesville, Caddo, El Dorado, De Soto, Crichton and, partly, Cotton Valley fields (R. 64), these fields being closely connected and producing similar oils from similar sands (R. 78).

The record, therefore, demonstrates that, with respect to a very large proportion of the oil produced in Louisiana, gravity plays no figure in the fixing of prices; that whatever gravity schedules exist grow out of an attempt to fix comparative values of similar oils for distillable gasoline; and that the schedules prevailing in South Louisiana are entirely unrelated and irrelevant to that in force in North Louisiana. It seems clear, therefore, that

the action of the Legislature in adopting as a basis for the admeasurement of a tax to be imposed upon all oil in Louisiana, a standard not common to all was arbitrary and unreasonable.

The defendant has never contended, either in his answer, in his affidavits to the rule for an interlocutory injunction or on final hearing, that gravity was adopted as a classification base for any reason other than as a rough measure of value. It is not contended in pleading, in affidavit or in evidence that differences in gravity form a basis for classification except upon the assumption that such gradations in gravity indicate gradations in value. So, the answer states (R. 15):

> "The gravity of oil severed from the soil is almost wholly controlling on the question of its value."

To the same effect were the long affidavits tendered by the defendant, and mentioned by this Court in its previous opinion as dealing with conclusions only. The principal witness for the defendant testified (R. 91) that all oil, practically, has been sold in Louisiana upon a gravity basis; that at practically all times oils of 28 gravity and below have sold more or less for the same price, whether in North or South Louisiana; that above 28 gravity, oils are sold on a gravity basis; and that this statement is borne out by the quotations in the oil trade journals. The witness testifies (R. 93), squarely contrary to the facts as found by the District Court (R. 67, 68), that there is nothing in the statute levying a higher tax upon oil of a lower

value than upon oil of a higher value; and that (R. 94) he himself worked out the schedule in the statute "so that it might accord more or less with the worth of the oil." So, throughout all the record, the contention of the defendant is and has been that a classification by gravity is substantially a classification by value. Neither on the former trial here nor in the District Court were the market prices of oil in the various fields controverted questions, nor the facts as to the production of the plaintiff in the fields in which it operates. The only disputed question of fact, before and now, arose out of the defense tendered that the classification and gradation adopted by the statute did not operate as a violation of any constitutional right of the plaintiff, because in a general manner the values of oils produced in Louisiana were determined by their gravity, and that the practical effect of the statute was a rough approximation of equality in taxation; such approximation being, admittedly, all that is required under the equal-protection clause of the Fourteenth Amendment.

This disputed question of fact was one which this Court said on the former hearing "must be resolved before the constitutional validity of the amendatory statute can be determined."

The evidence adduced below, as we have heretofore attempted to point out, demonstrates to a finality that gravity in no respect enters as a common measurement into the ascertainment of the relative values of oils produced within Louisiana, and that the selection of gravity as the basis of such admeasurement ineluctibly leads to a systematic discrimination against the producers in the fields in which this complainant operates.

If gravity, therefore, is not a common measure of value as between oils of different composition, there could be no more justification for its use in the measurement of the tax on all oils generally than there could be for the use of either the passenger-mile base or the ton-mile base for determining a common rate for both freight and passenger tariffs. See *Love v. A., T. & S. F. R. Co., 185 Fed. 321, 329*, cited by this Court in its former opinion.

For of course it is settled law that, broad as is the power to classify, any classification must, to meet the test of the Fourteenth Amendment,

> "be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."
>
> *Royster Guano Co., v. Virginia, 253 U. S. 412, 415*, and cases there cited.

Nor is it enough for the State to point out merely that the oils are of different gravities, that is, of different weights. It is necessary that there be in that fact some reason for using that difference as a basis for such a classification as will operate plain discrimination in the burden of taxation.

> "That is to say, **mere** difference is not enough. The attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect of which the classification is imposed, and can never be made arbitrarily and without any such basis.' Gulf, etc., Ry. Co. v. Ellis, 165 U. S. 150, 155."
>
> *Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 37.*

Manifestly the Legislature could not have taken a mere accidental quality, such as the color or the smell of oil as the basis for grading or classification. Likewise, to select for that purpose that which means nothing except relative weight is equally as arbitrary; for of course nothing can serve as a basis of classification that is not relevant either to value, to utility, to profit or to some end or purpose of sound public policy, where the direct result of its use is the imposition of materially variant tax burdens on persons similarly situated.

The constitutional provision under which authority for this legislation is claimed, *Section 21 of Article X of the Constitution of Louisiana*, provides:

> "Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance."

The Constitution speaks of the tax as one upon the product. The levy before the Court is not based upon the value nor upon gross receipts. The statute expressly says that it levies

> "a tax upon all natural resources severed from the soil or water * * * such as oil, * * *."

Section 2 of the act declares:

> "Taxes on natural resources severed from the soil or water * * * shall be predicated on the quantity severed, and shall be paid at the following rates: * * *"

Under this section appears a levy, not upon producers of oil, but upon the oil produced, and graded under the six classifications made by the act.[1]

In any event the statute levies either a tax upon the product or an excise upon the exercise by the operator of his right of severance of the mineral from the soil. In either case the burden of the tax falls entirely upon the producer; the incidence of the tax is wholly upon his operations. For all substantial purposes, whatever theoretically may be the nature of the tax, it is one upon the product. But if considered as a tax upon the operation of extracting the oil, the evidence discloses without dispute that the business of producing oil is the same throughout the State; there being neither in respect of machinery, of labor, of expenditures, of methods of operation nor of depth of wells (R. 77, 82) any difference between the business or the operation of producing oils of different gravities, whether in North or in South Louisiana. Whether, therefore, the tax be considered in its ultimate aspect as one upon the product, or as an excise upon the business of the operator, the record wholly fails to point out a justification for the imposition of a tax upon this complainant 100 per

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[1] In this respect the statute is entirely different from the one before the Court in Choctaw, Oklahoma & Gulf Ry. Co. v. Harrison, 235 U. S. 290, and in Oliver Iron Mining Co. v. Lord, 262 U. S. 172, 176, wherein the tax was of a percentage on the gross receipts, or of the gross value of the product. Likewise it differs from Gulf Refining Co. v. McFarland, 154 La. 251, 264 U. S. 573.

In the latter case, the controlling question was not whether the tax was an excise or a property tax, but whether Act 140 of 1922, imposing a severance tax of 3 per cent of gross value, was violative of Section 3 of Article X of the Louisiana Constitution, limiting the rate of taxation. The answer of the State Supreme Court was that Section 21, specially authorizing the severance tax, freed this form of taxation from the general limitation imposed by Section 3 upon the taxing power.

cent greater than that exacted of other producers in other fields of the State.

> "The application of the equal-protection clause does not depend upon what name is given to the tax."
>
> *Louisville Gas & Elec. Co. v. Coleman, 277 U. S. 32.*

The case is controlled by fundamental principles:

As concisely stated in *Sunday Lake Iron Co. v. Wakefield Township, 247 U. S. 350, 353:*

> "The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."

If the State law were in the form of a general property tax, and the assessing authorities had proceeded to value the properties of the various producers in the State, not according to their value, but according to the gravity of the oil produced, the same concrete result would have been reached as in this case; and it is settled law that in such a case relief would be granted because of the violation of the equal-protection clause of the Fourteenth Amendment occasioned by such act.

This Court has been vigilant in affording relief to the taxpayer against such administrative acts whenever

> "there exists, in respect to the property of complainant and others similarly situated, a systematic, intentional and illegal undervaluation of other prop-

erty by the taxing officers of the state, which necessarily effects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and in such cases Federal jurisdiction will arise because of the equal protection of the laws guaranteed by the 14th Amendment."

Raymond v. Chicago Union Traction Co., 207 U. S. 20, 36, and cases there cited;

Sunday Lake Iron Co. v. Wakefield Twp., 247 U. S. 350, 353;

Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, 445;

See also *N. C. & St. P. R. Co. v. Taylor, 86 Fed. 168;*

Louisville Trust Co. v. Stone, 107 Fed. 305.

A fortiori, when the arbitrary discrimination is not the act merely of administrative officials, but the immediate result of a direct mandate of the legislature, it is clear that the injured taxpayer has been denied by the State the equal protection of the laws.

Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 37;

Martin v. District of Columbia, 205 U. S. 135, 139;

Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237.

In view of the facts, it is manifest that the classification by gravity has no more reason upon which to rest than that considered and condemned in *Airway Appliance Corporation v. Day, 266 U. S. 71, 80,* in which this Court held to be void a tax laid upon foreign corporations based

only upon the number of authorized shares of stock. In that case the Court said (page 85):

> "It is clear that the mere number of authorized non-par-value shares is not a reasonable basis for classification of foreign corporations for the purpose of determining the amount of such annual fees. Such classification is not based on anything having relation to the purpose for which it was made. Southern R. Co. v. Green, 216 U. S. 400, 417; F. S. Royster Guano Co. v. Virginia, 253 U. S. 412, 415. The act has no tendency to produce equality; and it is of such a character that there is no reasonable presumption that substantial equality will result from its application. Martin v. District of Columbia, 205 U. S. 136, 139; Gast Realty & Investment Co. v. Schneider Granite Co., 240 U. S. 55, 58; Kansas City Southern R. Co. v. Road Imp. Dist., 256 U. S. 658, 660. The act violates the equal protection clause of the 14th Amendment."

For, despite any argument that can be made, the stubborn fact persists that it uniformly has been true throughout all the period covered by the evidence that oils taxed at 4 cents per barrel have been selling for more than oils of higher gravities, when under the statute the latter oils were made to pay a tax much larger than that imposed upon the more valuable oils. Nor does the record admit of any doubt that the plaintiff is compelled by the statute to pay about $40,000 a year more in severance taxes than it would pay if its rate of taxation were the same as that imposed upon producers of a large portion of the oil mined in Louisiana. These facts effectually nullify any argument that gravity is a reasonable method of grading the tax.

(4)

The classification adopted by the statute is unreasonable and arbitrary.

The defense tendered is substantially this: The State has the right to classify for the purposes of taxation; the State has adopted gravity as the basis of classification; gravity is a reasonable classification basis, not because it denotes different kinds or characters of oil, but because it is in general an index of the relative value of oils.

But, if gravity were indicative of the relative value of oils, it would seem that the progression of the tax should have corresponded, roughly at least, to the progression of gravities. But from the fact that such persistent and uniform discriminations as those demonstrated by this record are shown to be inherent in the plan, it must follow that, if there were such relation between gravity and value as is contended for by the defendant, the system of gradation used in the act must in itself be arbitrary.

The discrimination is uncontradicted. The inequality may result from the basis of classification or from the method of gradation. If either be arbitrary, or if their combined result be such as to produce the unusual and hostile discriminations here shown, then necessarily it follows that the statute denies the equal protection of the laws. That, taken together, these two elements do produce such result is beyond question. This is not denied in the opinion of the District Court. On the contrary (R. 68), the opinion exhibits the finding that a difference of 100 per cent does exist in respect of severance taxes imposed upon different producers under the statute here in question.

Whether the plaintiff is denied the equal protection of the laws through the use of the gravity scale or from the arbitrary system of classification thereunder adopted is immaterial. It is enough that the act in its practical effect operates a denial of equal protection. It is immaterial to the plaintiff by what process it is discriminated against; it is enough that the discrimination exists.

The contention of the State is that it is justified in classifying all oils produced within the State according to no other standard than that of gravity; and in so doing, it has arranged all oils for the purposes of taxation into six classes. It treats all oil below 28 degrees gravity as one class, upon which it imposes a flat tax of four cents. All oils between 28 and 31 gravity constitute another class, with a rise in the tax of a quarter of a cent. It places all oils between 31 and 32 gravity as another class, with a rise of three-quarters of a cent in the tax. It then treats oils between 32 and 36 gravity as a separate class, upon which it imposes a tax three cents a barrel or 60 per cent higher than upon the former class. Its next division is of oil between 36 and 43 gravity, upon which it imposes a tax two cents or 25 per cent higher; and above 43 gravity all oil is taxed at 11 cents or one cent higher than the class just below.

The record shows (R. 88) that oils of varying gravities are produced within the same fields from different sands, and even from the same sands (R. 89). Thus oils produced in the same district, and even from the same lease, would fall by the operation of the statute into separate classes paying entirely different and discriminatory rates of taxation. The record contains nothing from which

the conclusion could be reached that an oil of 32 gravity produced in a particular field should pay a tax of 5 cents per barrel, while oil of 32.1 gravity in the same field should pay a tax of 8 cents per barrel; and yet such is the effect of the statute. And so throughout the whole gamut of the so-called classification: the record suggests nothing upon which could be rested a substantial ground of difference between the subject matter of the several classes. The schedule purports, according to defendant, to rest upon differences in value, and yet the arrangement of the progression of the tax is such that the increase in tax, necessarily and systematically, is unrelated to increase in value. The step-up between the first and second classes is of a quarter of a cent within a 3-point gravity range; between the second and third, three-quarters of a cent, with one point difference in gravity; between the third and fourth classes, a 3-cent rise in the tax over a gravity range of four points; between the fourth and fifth classes, a 2-cent rise in the tax, with a 7-point spread in gravity range; and above 43 gravity, all oil, regardless of its value, is taxed at a flat rate of one cent more than oil between 36 and 43 gravity.

It is manifest that there is no relation whatever between the supposed increase in value of oil and its gravity as measured by the step and spread of the tax required by this formula; which, therefore, lacks that reasonableness required to justify a classification through which a discrimination results.

> "The equal protection clause does not detract from the right of a state justly to exert its taxing power, or prevent it from adjusting its legislation to differences in situation, or forbid classification

in that connection; but it does require that the classification be not arbitrary, but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation."

Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389, 400.

An analysis of the facts, as they bear on plaintiff's case, illustrates more clearly the arbitrariness of the so-called classification.

(1)

The act divides all oils into six classes, upon which it levies a tax varying from 4 to 11 cents, according to the class. The first class embraces all oil of 28 gravity and below. The tax on these oils is 4 cents. Their price range, at the date of the filing of the suit, was from $0.75 to $1.30 a barrel (R. 54). The percentage of tax, therefore, within this class varied from 3.1 per cent to 5⅓ per cent.

The Ohio Oil Company, the complainant, produces Urania oil, which, at the date of suit, by virtue of its price, 75 cents (R. 54), paid the highest tax within the class.

Reference to the Conservation Commission Report (R. 49) will show that the average price of Urania crude within the period of years covered by the report was $1.00 per barrel, and that of Gulf Coast "A", $1.42. The average tax that would have been paid by Urania crude, therefore, during the entire period would have been 4 per cent, and by coastal crude, 2.8 per cent.

(2)

No oils within the second class, at the date of the filing of the suit (R. 54), commanded as high a market price as did the Coastal "A" oils in the first class. At the present date, the price range within this class is from $0.85 to $1.33 (R. 64). The tax, therefore, in this class runs from 3 per cent to 5 per cent. It is of interest to note that, outside of the production from the Yount-Lee well, repeatedly spoken of in the testimony (R. 82, 86, 95), there is no oil within this class that brings as high a price as Coastal "A", which is within the first class.

(3)

The third class of oil is taxed 5 cents per barrel. At the date of the filing of the suit, the range of prices within this class was from $0.75 to $1.11 (R. 54). The tax, therefore, varied from 6⅔ per cent to 4.5 per cent. No oil within this 5-cent class brought as high a price as did Coastal "A" oil, which forms the larger portion of the oil falling within the first or 4-cent class.

At the date of trial, the price range within this class was from $0.85 to $1.36 per barrel (R. 64), the tax varying from 3.7 per cent to 5.9 per cent. Within this class The Ohio Oil Company produces the heavy oil of Cotton Valley; the present market value of which is 85 cents, as against $1.30 for Coastal "A" of lower gravity. The rate of taxation on this oil, at the date of the filing of the suit, was 6.6 per cent (its market price was 75 cents,

R. 54), and is now 5.8 per cent, as compared with a rate of 3.1 per cent on Coastal "A" oil, falling within the first class.

A reference to page 123 of the Conservation Commission Report (R. 49) will show an average price on this oil for the period covered by the report of $0.97 per barrel, so that the average rate, had this act been in force, would have been 5.1 per cent as against an average rate of 2.8 on Coastal "A".

(4)

On the fourth class, from 32 to 36 gravity, the tax is 8 cents. The price range within these four degrees, at the date of the filing of the suit, was $1.16 to $1.25 a barrel. (R. 54). **The highest-priced oil, therefore, within this class sold for a smaller price than did the coastal oils, which constituted the bulk of the first class, but paid double the tax imposed on the higher priced oil.** At the present time, the price range is from $1.25 to $1.48 (R. 64), or an average of about the same as that of the bulk of the oil which pays a 4-cent tax.

Within this class The Ohio Oil Company produces oil at Haynesville, the tax on which was 7 per cent at the date of the filing of the suit, and is now 5.4 per cent. The average price on this oil throughout the period covered by the Conservation Commission Report was $1.51 per barrel, which would have resulted in an average tax rate, had the act been in force throughout that period, of 5.3 per cent; the average rate on Coastal "A" being 2.8 per cent.

(5)

Oil of from 36 to 43 gravity is taxed at 10 cents a barrel. The price range, at the date of the filing of the suit, was from $1.28 to $1.46. It will be noted, therefore, that **there was oil taxed at 10 cents per barrel selling for less than the greater part of the oil taxed at 4 cents a barrel.** The present price range is from $1.45 to $1.75 a barrel. Within this class The Ohio Oil Company produces oil at Pine Island in Caddo Parish. At the date of the filing of the suit, its tax rate was 7.9 per cent, and it is now 5.7 per cent.

Page 123 of the Conservation Commission Report shows an average price for the past five years of $1.81, which would have resulted in an average rate of tax, had the act been in force, of 5.5 per cent, or about double the average rate on Coastal "A".

(6)

The price range for the gravities within this class was, at the date of the suit, from $1.49 to $1.76; at the present time, from $1.80 to $1.85. Within this class The Ohio Oil Company produces the light oil of the Cotton Valley district, upon which its tax was, at the date of the suit, 7.4 per cent, and under the readjusted prices, 6 per cent. During the period of the Conservation Commission Report, since the bringing in of the Cotton Valley field, the average price on this oil was $1.76, on which the average tax, had the act been in effect, would have been at the rate of 6.3 per cent, considerably more than double the average rate on Coastal "A" oil.

The record, therefore, demonstrates that, whether due to the use of gravity as a basis of classification or due to the arbitrary method of division into classes, the act works a systematic and hostile discrimination against this plaintiff in favor of others similarly situated, for **at all times higher gravity oils of lower value are burdened with a materially higher tax than oils of lower gravity and greater value.**

Hence, the act "has no tendency to produce equality; and it is of such a character that there is no reasonable presumption that substantial equality will result from its operation."

Airway Electrical Appliance Corporation v. Day, 266 U. S. 71, 80.

It remains briefly to discuss the reasons advanced by the District Court for sustaining the statute in spite of the indisputable facts evinced by the record and of its own conclusions of fact.

THE REASONS ASSIGNED BY THE DISTRICT COURT.

The various reasons advanced by the District Court for sustaining the statute will be found on pages 68 and 69 of the record. It is respectfully submitted that these legal conclusions are inconsistent with settled principles.

On page 68 of the record, the Court, after pointing out that the Louisiana Constitution authorizes the levy of specific taxes on oil severed from the soil, observes:

"Specific taxes must bear some relation to value. Cooley on Taxation, 4th Ed., par. 297. If

> the legislature had taxed all oil at say 4c per barrel the producers of low valued oil would have had just cause to complain. Classification was therefore necessary."

That is to say, the court finds that a tax of a fixed sum per barrel, upon all oil, would have been of doubtful constitutionality, so that it was necessary to classify oil for the purpose of making the tax bear some relation to comparative values; and yet the facts conclusively demonstrate, and the court finds, that, under the classification as made, oils of lower value are systematically taxed at a higher rate per barrel than are oils of higher value. If, therefore, a tax of a fixed sum per barrel as to all oil would have been objectionable, it is apparent that this classification under which higher specific rates of tax levied upon lower-priced oil, is clearly and hostilely discriminatory.

The next reason advanced by the court (R. 69) is that "the tax need not operate equally throughout the State, provided it is equal as to all persons within a particular district." This, of course, states a settled principle applicable to local, special or district taxes. It of course has no application to taxes imposed by the State for State purposes. It would seem unnecessary to cite authorities to clarify the text of the provision of Section 1 of the Fourteenth Amendment to the Federal Constitution which prohibits any State from denying "to any person within its jurisdiction the equal protection of the laws."

A state statute designed to raise taxes for general State purposes throughout the State on all persons engaged in a particular occupation of course presupposes the application to all persons under similar circumstances of substantially equal taxation. The constitutional guaranty of the equal protection of the laws is a pledge of the protection of equal laws.

Yick Wo v. Hopkins, 118 U. S. 369.

Nor may geographical location be used as the basis of classification for the purpose of taxation. Manifestly, the legislature could not in so many words have imposed one tax upon producers of oil in one portion of the State and different and varying rates in other portions of the State. All those engaged in the same occupation are entitled, in virtue of the Federal Constitution, to the equal protection of the laws throughout the limits of the State.

Sunday Lake Iron Co. v. Wakefield Tp., 247 U. S. 350, 353.

If the State may not impose a tax upon a corporation which it does not levy against an individual *(Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389)*, or may not impose upon a foreign corporation which has acquired a domicile and fixed property within the State a franchise tax not exacted of domestic corporations *(Southern Ry. Co. v. Green, 216 U. S. 400, 412)*, it must necessarily follow that, as between concerns pursuing the same occupation within the same State, a discrimination cannot be effected

solely upon the basis of the geographical location of their respective businesses.

The opinion of the District Court rests upon its conclusion that the fact that gravity "is one means of identifying all oil" renders it sufficiently a basis for classification, although comparative gravities have relation to value only in oils of similar composition and origin. It is upon this conclusion that the entire opinion rests. The fact that gravity possessed no relevancy to comparative values in different kinds of oil was, to the court's mind, inconsequential, in spite of its holding of fact that clear discrimination necessarily resulted from the system used.

Suggestions made in the opinion that the Legislature might have used other bases of classification require no discussion. The opinion distinctly holds that the classification was made entirely upon the basis of gravity; and neither in answer nor in brief, either on the former hearing here or below, has it ever been suggested that the Legislature had in mind any basis of classification other than that merely of gravity.

It is respectfully submitted that the record resolves in every particular in favor of the plaintiff every dispute upon the material questions of fact presented by the pleadings and the affidavits; and, hence, that the opinion of the District Court maintaining the constitutional validity of the tax is wrong and should be reversed.

POINT II.

Act 5 of 1928 of the Louisiana Legislature is void as in conflict with Section 21 of Article X of the Constitution of Louisiana.

(a)

The severance tax imposed by the statute in question is levied neither according to quantity nor to value.

Section 21 of Article X of the Louisiana Constitution regulates the power of the Legislature in respect to severance taxes. So much of that article as is pertinent here is as follows:

> "Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Such natural resources may be classified for the purpose of taxation and such taxes predicated upon either the quantity or value of the product at the time and place where it is severed."

The statute states in its title that it is to carry into effect Section 21 of Article X of the Louisiana Constitution of 1921.

It is the contention of the plaintiff that the statute therefore levies the tax neither according to quantity nor to value.

This question as to the power of the Legislature under the State Constitution has never been presented to the State courts, and hence must be here decided as an original question.

Dawson v. Kentucky Distilleries Co., 255 U. S. 288, 296.

It is manifest that the levy here is not according to value. That standard, however, was used in the prior act, under which the tax was three per cent of the gross value of the oil produced.

Gulf Refining Co. v. McFarland, 154 La. 251;
affirmed in *264 U. S. 573.*

Nor does the statute levy a tax of a certain sum per barrel upon all oil produced. And yet the power of the Legislature is distinctly limited to two bases for the levy, i. e., "upon either the quantity or value of the product."

We have already devoted much space to the demonstration of the gross inequality in rates of tax effected by the statute when values are considered. The act itself displays similar inequality in the rate imposed according to quantity. For example, a barrel of oil may be taxed at from 4 cents to 11 cents. The only measure of quantity of oil is the barrel of 42 gallons. And yet the statute directly provides that such quantity of oil shall be taxed, not at a fixed rate, but according to a scale under which the highest tax is almost three times that of the lowest one. Argument can add very little to the force of the demonstration of the plain variance between the terms of the statute and those of the State Constitution unequivocally expressed.

It is plain, therefore, that the only argument that could be advanced in favor of the validity of the statute under the State Constitution would be one based upon the contention that the statute has classified oils according to gravity and has laid a tax according to quantity under each of the classifications thus adopted. This is what the District Court held (R. 68).

(b)

Whatever of classification is attempted by the act is arbitrary and unreasonable.

With respect to defendant's contention, it must of course be accepted as true that the mere use of the term "classification" does not justify discriminatory taxation. The power of the Legislature is limited in this respect to such classifications as are not unreasonable or arbitrary. Whatever classification be adopted must in every case, of course, bear a reasonable relation to the ends, purposes or objects of the legislation. From this standpoint must be tested defendant's contention that the Legislature has divided oils produced within the State into six classes and has levied a different and varying fixed rate of taxation, according to quantity, upon the oil produced within each class.

It is submitted the evidence heretofore discussed clearly establishes the absence of any reasonable relation between such classification and any proper object or purpose of legislative action. Differences in gravity do not reflect differences in value; they do not reflect differences in utility; they do not reflect differences in cost of production; they do not reflect differences of any character except differences in weight. The selection of this incidental property common to all matter, which serves as an index to nothing except relative weight, would seem to demonstrate its own unreasonableness.

And, when the undisputed facts establish that the direct and necessary effect of the levy is to impose upon

higher-gravity oils of smaller value, a tax double the specific sum levied upon lower-gravity oils of higher value, it would seem that the so-called classification is but a screen for clear and hostile discrimination.

If, therefore, the classification be in itself improper, we are confronted with a statute which purports to impose a tax, not according to value, not according to quantity, but according to a new and distinct basis inconsistent with the State constitutional provisions. A statute which levies a tax upon oil severed from the soil, not according to value nor to quantity, but at different specific rates per barrel, according to a standard in itself unreasonable, could not be justified because of the provision of the State Constitution authorizing "classification", for that term always excludes arbitrary selection.

IN CONCLUSION.

It is respectfully submitted, therefore, that the action of the District Court in dissolving the injunction and dismissing the bill was erroneous, and that it should be reversed.

Respectfully submitted,

S. L. HEROLD,
SUMTER COUSIN,
R. L. BENOIT,
Attorneys for Plaintiff.

APPENDIX 1.

ACT 5 OF 1928.

ACT NO. 5.

House Bill No. 89. By Mr. McClanahan.

AN ACT

To amend and re-enact Sections 2 and 5 of Act 140 of 1922, and entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite, and other ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided," and to amend and re-enact Section 3 thereof, as amended and re-enacted by Act No. 301 of 1926.

Section 1. Be it enacted by the Legislature of Louisiana, that Section 2 of Act 140 of 1922, entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as gas, oil, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided," be amended and re-enacted so as to read as follows:

Section 2. Taxes on natural resources severed from the soil or water, as levied by Section 1 of this Act, shall be predicated on the quantity severed, and shall be paid at the following rates:

(1) On cypress timber, twenty-six (26) cents per thousand feet, log scale.

(2) On second growth or old field pine timber, seven (7) cents per thousand feet, and on virgin pine timber seventeen (17) cents per thousand feet, log scale.

(3) On ash and hickory timber, twenty-four (24) cents per thousand feet, log scale.

(4) On cottonwood, red gum, magnolia, oak, poplar and sycamore timber, twelve (12) cents per thousand feet, log scale.

(5) On tupelo gum, black gum and sap gum timber, seven (7) cents per thousand feet, log scale, and on all other hard woods ten (10) cents per thousand feet, log scale.

(6) On turpentine, (crude gum), ten (10) cents per barrel of 400 pounds.

(7)a. On oil of 28 gravity and below, four (4) cents per barrel of 42 gallons.

b.(1) On oil above 28 gravity and not above 31 gravity, four and one-fourth (4¼) cents per barrel of 42 gallons.

b.(2) On oil above 31 gravity and not above 32 gravity, five (5) cents per barrel of 42 gallons.

(c) On oil above 32 gravity and not above 36 gravity, eight (8) cents per barrel of 42 gallons.

(d) On oil above 36 gravity and not above 43 gravity, ten (10) cents per barrel of 42 gallons.

(e) On oil above 43 gravity, eleven (11) cents per barrel of 42 gallons.

(8) On gas, one-fifth (1/5th) of one cent (1c) per thousand cubic feet, measured at ten ounce (10 oz.) pressure.

(9) On sulphur, fifteen (15) cents per ton of two thousand pounds.

(10) On salt, four (4) cents per ton of two thousand pounds.

(11) On coal, five (5) cents per ton of two thousand pounds.

(12) On lignite, five (5) cents per ton of two thousand pounds.

(13) On ores, five (5) cents per ton of two thousand pounds.

(14) On marble, ten (10) cents per ton of two thousand pounds.

(15) On stone, one and one-half (1½) cents per ton of two thousand pounds.

(16) On gravel, one and one-half (1½) cents per ton of two thousand pounds.

(17) On sand, one (1) cent per ton of two thousand pounds.

(18) On shells, one and one-half (1½) cents per ton of two thousand pounds.

Section 2. That Section 3 of Act 140 of 1922, as amended and re-enacted by Act 301 of 1926, be amended and re-enacted so as to read as follows:

Section 3. All such taxes shall be collected quarterly by the respective Sheriffs and Ex-officio Tax Collectors of the several parishes from within which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and, unless otherwise herein provided, in the same manner and at the same time as required by law for other state collections.

When so paid into the State treasury, all of the severance taxes collected on oil, gas, salt and shells, not otherwise allocated herein, together with all of the severance taxes collected on all other natural resources severed from the soil or water, shall be credited by the auditor and treasurer to a special fund, which is hereby created to be known as the Severance Tax Fund of the State of Louisiana.

One-fifth (1/5th) of the severance taxes collected on oil, gas, salt, shells, timber, sand, and gravel, is hereby allocated to the parish from which such taxes are collected, and shall be credited to such parish by the auditor and treasurer, provided such allocation and credit shall not exceed Two Hundred Thousand ($200,000.00) Dollars in any parish in any one year. When this limit of Two Hundred Thousand ($200,000.00) Dollars shall have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the Severance Tax Fund hereinbefore created."

That Section 5 of Article 140 of 1922 be amended and re-enacted so as to read as follows:

Section 5. Every person, firm, corporation or association of persons severing any natural resources from the soil or water in this State shall, within thirty (30) days after the expiration of each quarter-annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Supervisor of Public Accounts a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, corporation or association of persons, during the last

preceding quarter-annual period, showing the kind of natural resources and the gross quantity of each so severed or produced, the names of the owners at the time of severance, the portion owned by each, and such other reasonable and necessary information pertaining thereto as the Supervisor of Public Accounts may require for the proper enforcement of the provisions of this Act. There shall also be shown on such quarterly reports the location of each natural resource and the place or places where produced or severed from the soil or water.

At the time of rendering such quarter-annual report to the Supervisor of Public Accounts, each person, firm, corporation, or association of persons, shall concurrently file a duplicate with the Tax Collector of the parish where said natural resources were taken or severed from the soil or water; and shall pay to said Tax Collector a tax on the gross quantity of each natural resource severed, computed at the rate applying thereto as named in Section two (2) of this Act.

Approved by the Governor: July 7, 1928.

A true copy:

JAMES J. BAILEY,

Secretary of State.

APPENDIX 2.

Taxes upon production of oil are levied by the following States, the tax in every instance being a percentage of the value of the oil produced:

ARKANSAS.

Act 118 of 1923, as amended by Act 142 of 1927.

KENTUCKY.

Act of March 29, 1918, ch. 122, Acts of 1918, page 540.

(See Swiss Oil Corp. v. Shanks, 273 U. S. 407, 409).

MONTANA.

Chapter 266 of Laws of 1921, as amended by Chapter 67 of the Laws of 1923.

NEW MEXICO.

Act of March 17, 1925, ch. 83, Laws of 1925.

OKLAHOMA.

Section 9814, Compiled Statutes of 1921.

TEXAS.

Acts of 1907, page 479, as amended by Acts of 1919, page 128, and Acts of 1923, 2nd C. S., page 98.

WEST VIRGINIA.

Acts of Extra Session of 1925, par. 2-a, ch. 1, page 98. (See Hope Natural Gas Co. v. Hall, 247 U. S., 284, 285).

WYOMING.

Chapter 179, Sections 2906-11, Compiled Statutes of 1923.

No other States impose excises analogous to "severance taxes," although nearly all levy the ordinary *ad valorem* property tax upon the wells or producing properties, using the value of production as a material element in arriving at the assessment.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

T. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA.

Appellee.

ORIGINAL BRIEF FOR APPELLEE.

PERCY SAINT,
Attorney General;
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GEORGE SETH GUION,
Of Counsel.

Filed: February, 1930.

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Appellee.

ORIGINAL BRIEF FOR APPELLEE.

STATEMENT.

In 1910 the Legislature of the State of Louisiana, by Act 154, proposed an amendment to Article 229 of the Constitution. This amendment was submitted to the people of the State and was ratified at an election held in November of that year. This amendment provided:

> "Those engaged in the business of severing natural resources, as timber and minerals, from the soil or water whether they thereafter convert them by manufacturing or not, may also be rendered liable to a license tax, but in this case the amount to be collected may either be graduated or fixed according to the quantity or value of the product at the place where it is severed."

At its session in 1912, the Legislature passed Act 209. The object of this act was to carry into effect the provisions of the Constitution of 1898, as amended, and to provide for the levying of an annual license tax upon all persons engaged in the business of severing natural products from the soil.

The license exacted was one-half of one per cent of the gross value of the total production, less the royalty interest accruing to the owner. The value of the products was to be computed at the place where they were severed or taken from the soil.

Thereafter, the Legislature passed Act 296 of 1914, which authorized the police juries of the several parishes to levy an annual license tax not to exceed the amount levied by the State.

Under this authority the Police Jury of Red River Parish levied a license tax of one and one-half per cent of the gross value of the total production (less the royalty interest) upon those engaged in severing minerals, including oil, gas and sulphur.

The Standard Oil Company paid this tax, under protest, and instituted suit to recover the amount paid, and to have the ordinance so passed declared unconstitutional.

The Oil Company contended that the ordinance was unconstitutional, because it exempted the royalty interest from the payment of the tax and thus discriminated against the remaining interest of those engaged in severing minerals from the soil. It was contended that the statute

and ordinance adopted an arbitrary and unfair classification, and discriminated against those pursuing the business of severing minerals and in favor of those severing timber from the soil, and that the said Act was unconstitutional in that it denied plaintiff the equal protection of the law, in violation of the Fourteenth Amendment.

The Supreme Court of Louisiana held that there was no arbitrary discrimination and no denial of the equal protection of the law.

Standard Oil Co. of La. v. Police Jury, 140 La., p. 47.

At its session in 1916, the Legislature passed Act 145. This statute provided for a tax upon production and the tax was fixed at the following rates:

2½ cents per 1000 feet for Pine Timber;
3 " " " " " Oak and Ash Timber;
4 " " " " " Cypress;
2 " " " " " all other kinds of Timber;
10 " " ton for Sulphur;
2 " " " " Salt;
1 cent per barrel for Turpentine;
1/5 of one mill per 1000 cubic feet of Gas;
3/4 of 1 per cent. per bbl. for Oil.

At the Extra Session of 1918, the Legislature passed Act 20 which provided the same rate as did Act 145 of 1916.

At its regular session in 1920, the Legislature passed Act 31 which levied a tax of 2 per cent. upon the gross value of the total production of the three preceding months. The Act provided that the value of the products severed were to

be computed as of the time when, and at the place where, each product or natural resource was severed or taken from the soil or water.

In 1921 a new Constitution was adopted for the State of Louisiana.

Section 21 of Article X of that Constitution, provides:

> "Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Such natural resources may be classified for the purpose of taxation and such taxes predicated upon either the quantity or value of the product at the time and place where it is severed. No severance tax shall be levied by any parish or other local subdivision of the State.
>
> "No further or additional tax or license shall be levied or imposed upon oil or gas leases or rights, nor shall any additional value be added to the assessment of land, by reason of the presence of oil or gas therein or their production therefrom."

Pursuant to this Article, and in order to carry into effect the above section and Article of the Constitution, the Legislature, at its session in 1922, passed Act 140. This Act divided the natural resources severed from the soil or water into two classes, and taxes thereon were levied at the following rates:

> On oil and gas 3 per cent. of the gross market value of the total production;
>
> **On all other natural resources 2 per cent.** of the gross market value.

The Supreme Court of Louisiana in the case of *Gulf Refining Co. v. McFarland, reported in 154 An., p. 251,* held that the tax levied by the above Act was not a property tax but an excise tax upon the privilege of severing, though it was measured by the value of the property severed. This decision was affirmed by this Court in decisions *per curiam*, etc., *264 U. S., p. 573.*

At its session in 1928 the Legislature of Louisiana passed Act No. 5, which amended Section 2 of Act 140 of 1922. This amendatory Act provides:

> "Taxes on natural resources severed from the soil or water, as levied by Section 1 of this Act, shall be predicated on the quantity severed, and shall be paid at the following rates:
>
> (1) On cypress timber, twenty-six (26) cents per thousand feet, log scale.
>
> (2) On second growth or old field pine timber, seven (7) cents per thousand feet, and on virgin pine timber (17) cents per thousand feet, log scale.
>
> (3) On ash and hickory timber, twenty-four (24) cents per thousand feet, log scale.
>
> (4) On cottonwood, red gum, magnolia, oak, poplar and sycamore timber, twelve (12) cents per thousand feet, log scale.
>
> (5) On tupelo gum, black gum and sap gum timber, seven cents (7c) per thousand feet log scale, and on all other hardwoods (10) cents per thousand feet, log scale.
>
> (6) On turpentine (crude gum), ten (10) cents per barrel of 400 pounds.

(7) a. On oil of 28° gravity and below, four (4) cents per barrel of 42 gallons.

b. (1) On oil above 28° gravity and not above 31° gravity, four and one-fourth (4¼) cents per barrel of 42 gallons.

b. (2) On oil above 31° gravity and not above 32° gravity, five (5) cents per barrel of 42 gallons.

(c) On oil above 32° gravity and not above 36° gravity, eight (8) cents per barrel of 42 gallons.

(d) On oil above 36° gravity and not above 43° gravity, ten (10) cents per barrel of 42 gallons.

(e) On oil above 43° gravity, eleven (11) cents per barrel of 42 gallons.

(8) On gas, one-fifth (1/5) of one cent (1c) per thousand cubic feet, measured at ten ounce (10 oz.) pressure.

(9) On sulphur, fifteen (15) cents per ton of two thousand pounds.

(10) On salt, four (4) cents per ton of two thousand pounds.

(11) On coal, five (5) cents per ton of two thousand pounds.

(12) On lignite, five (5) cents per ton of two thousand pounds.

(13) On ores, five (5) cents per ton of two thousand pounds.

(14) On marble, ten (10) cents per ton of two thousand pounds.

(15) On stone, one and one-half (1½) cents per ton of two thousand pounds.

(16) On gravel, one and one-half (1½) cents per ton of two thousand pounds.

(17) On sand, one (1) cent per ton of two thousand pounds.

(18) On shells, one and one-half (1½) cents per ton of two thousand pounds."

The Ohio Oil Company is engaged, and has been engaged, in the business of producing and purchasing oil in Louisiana. It produces oil in what is known as the Haynesville field in the Parish of Claiborne; in what is known as the Cotton Valley field in the Parish of Webster; in what is known as the Urania field, which is in the Parish of LaSalle, with some wells in the adjoining Parish of Winn, and in what is known as the Pine Island field in Caddo Parish. All these fields are situated in the northern part of the State. Complainant produces no oil in South Louisiana. (R., 74, 75).

At the time of the trial on its merits, complainant was not producing oil in what is known as the Urania field. (R., 74, 75).

Complainant contends that Act No. 5 of 1928 is unconstitutional. Reasons assigned for the alleged unconstitutionality are:

1st. That the said Act denies to it the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2nd. That the said Act violates Section 21 of Article X of the Constitution of 1921.

Complainant assigns six different grounds for its contention that the Act denies to it the equal protection of the law. They are, as follows:

(a) Because the burden laid by said act upon the production of oil by your complainant from the fields in which it operates in the State of Louisiana is grossly in excess of that laid upon and paid by producers of oil in other fileds in the State of Louisiana;

(b) Because the burden laid by the said act upon the production of oil by other persons and corporations engaged in identically the same occupation, and under the same circumstances, is made by said act to vary according to arbitrary standards, so that the occupation of complainant is subjected by said Act to a burden of taxation more than twice as great as that of other persons engaged in identically the same occupation;

(c) Because the standard fixed in said Act, levying the severance tax according to the gravity of the product severed, results in gross and unreasonable discrimination, in that such standard entirely ignores the market value of the oil produced, which varies widely in the different oil fields of the State of Louisiana; the net result thereof being to impose upon the oil produced by complainant a burden grossly excessive and discriminatory as compared with that laid by the statute upon oil produced from other fields in the State of Louisiana;

(d) Because the attempted classification of oil, for the purpose of taxation in the said statute, to-wit, that of gravity, is wholly arbitrary, has no reasonable relation whatever to any ground of difference having a fair and substantial relation to the value of oil produced in the various fields of the State of Louisiana, and results in grossly discrim-

inatory treatment as against complainant with respect to other persons similarly circumstanced;

(e) That said Act No. 5 of 1928 discriminates arbitrarily in favor of producers of oil in South Louisiana and against (fol. 8) producers of oil in North Louisiana, that the burden imposed by it upon the business of complainant and other producers of oil in North Louisiana is grossly excessive and discriminatory as compared with the burden imposed by it upon the production of oil in South Louisiana, and

(f) That said act is based upon discrimination of a most unusual character, which particularly operates against this complainant, in that under the said statute it is compelled to pay a tax in respect of oil produced by it, the burden of which is grossly in excess of that paid by other producers of oil of identically the same gravity.

Both temporary and permanent injunctions were sought. The application for temporary injunction was submitted to the three Judge court provided for by Section 266 of the Judicial Code, and was heard upon the bill, answer and affidavits. The injunction applied for was denied. (See *Ohio Oil Co. v. Supervisor of Public Accounts, 28 Fed. Rep., 2d Series, 441*). From said judgment complainant prosecuted an appeal to this Court.

This Court found that there was a dispute upon material questions of fact which could not be satisfactorily resolved upon the affidavits filed, and it was of the opinion that the lower Court should have issued an interlocutory injunction upon certain terms and conditions. *(Ohio Oil Company v. Conway, 279 U. S. 813, 49 Sup. Ct. Rep. 256).* An injunction was issued. A trial upon the merits was

had. The Court held the Act constitutional. The injunction prayed for was denied and the plaintiff's bill dismissed. (R., 65, 69). Plaintiff appeals directly to this Court.

ARGUMENT.

POINT I.

The authority to levy a tax upon those engaged in severing resources from the soil is expressly conferred upon the Legislature of Louisiana by the Constitution of the State. This authority has existed since 1910 and has been exercised since 1912.

During this period the Legislature has levied a tax both upon a quantity and a value basis, as shown in the statement in this brief.

The statutes levying this tax have been assailed, but their constitutionality and validity have been consistently maintained by the Supreme Court of Louisiana and by this Court.

> *Gulf Refining Co. v. McFarland, 154 An. 251;*
> *Decisions per curiam, etc., 264 U. S. 573;*
> *Standard Oil Co. of La. v. Police Jury, 140 La. 46.*

Section 21 of Article X of the Constitution of Louisiana expressly authorizes the Legislature to classify, for purposes of taxation, the natural resources of the State and to predicate the tax either upon the quantity or upon the value of the product at the time and place of severance.

The power to levy this tax, unlike the power to levy other taxes and licenses, is restricted solely to the State as parishes and other subdivisions of the State are prohibited by this article from levying same.

Pursuant to constitutional authority the Legislature of Louisiana adopted Act 140 of 1922. Under this Act a tax of 3 per centum was levied upon the gross market value of the production of said oil. (Appendix, pp. 61 to 73).

This Act was amended in 1928, and instead of levying the tax upon the gross market value it was levied upon a quantity basis, as authorized by Section 21 of Article X of the Constitution.

Recognizing and realizing that there was a wide and great difference in the various classes of timber, and that this difference was everywhere recognized because some classes were more valuable than others and therefore commanded better prices, the Legislature, exercising the wide latitude and discretion vested in it, classified timber into the following classes:

Cypress,	Magnolia,
Pine,	Oak,
Hickory,	Poplar,
Ash,	Tupelo Gum,
Cottonwood,	Black Gum,
Red Gum,	Sap Gum.

and sub-divided pine into what was called "old field pine" and "virgin pine," and levied different rates upon these different classes.

Realizing that in the oil industry there were differences in the crude oil produced, and that this difference was recognized by those engaged in it because it was bought and sold upon a gravity basis and prices quoted according to the gravity of the oil, all of which was a matter of public knowledge, the Legislature, exercising that discretion and power vested in it, levied the tax upon the quantity severed and classified the oil according to gravity, fixing a different rate for the different classes.

Complainant admits the right of the State to levy severance taxes. It admits that Act 140 of 1922 was and is a valid and constitutional act. It admits that the Legislature has the authority to classify, for purposes of taxation, the natural resources of the State. It admits that the tax is not a property one.

Its position is that, as to it, Act No. 5 of 1928 denies to it the equal protection of the law in violation of the Fourteenth Amendment.

The Court below consisted of one Circuit Judge and two District Judges; all of these judges resided in Louisiana. One of the judges resided in the Northern part of Louisiana, and the other two in the Southern portion. Necessarily, they possessed greater knowledge of local conditions and needs than is possessed, perhaps, by this Court. Each of them found that the classification adopted was not an arbitrary one; that it had a reasonable basis upon which to rest; that there was no clear and hostile discrimination against complainant, and that it was subject to no greater tax than others who severed and produced oil under the same circumstances and of the same class as complainant.

Appellant states its position in its assignment of error, as follows:

FIRST: That Act No. 5 of 1928 is void because it denies plaintiff the equal protection of the law, in violation of the Fourteenth Amendment, in that:

(a) The statute in question operates a systematic and oppressive discrimination against it.

(b) That the discrimination thus practiced rests upon no reasonable basis of classification.

SECOND: That said Act is void as being in conflict with Section 21 of Article X of the Constitution of Louisiana of 1921, in that:

(a) The severance tax imposed by said statute is levied neither according to quantity nor to value.

(b) That whatever classification is attempted is arbitrary and unreasonable.

(a)

The first question is:

Does the statute in question operate a systematic and oppressive discrimination against plaintiff, in violation of the Fourteenth Amendment?

This Court has repeatedly held that the equal protection clause of the Fourteenth Amendment does not take from the State the right to classify, but that it admits of the exercise of a wide discretion and only avoids the classi-

fication when it is without reasonable basis, and is palpably arbitrary.

This Court has repeatedly held that the burden of showing that classification does not rest upon a reasonable basis, and that it is palpably arbitrary rests upon the one assailing it.

It is also well settled that a State legislature cannot be controlled in the exercise of this discretion so long as it refrains from clear and hostile discriminations against all classes or persons.

Lindsley v. National Carbon Gas Co., 220 U. S., 62;

Metropolis Theatre Co. v. City of Chicago, 228 U. S. 61, 47 Sup. Ct. Rep., p. 646.

It is further settled that in order to violate the equal protection clause of the Fourteenth Amendment, the classification must be actually and palpably unreasonable and arbitrary. The mere production of inequality is not enough.

Radice v. People of State of New York, 264 U. S. 292.

Does this statute discriminate against plaintiff or the class to which it belongs, and if so, is such discrimination intentional, arbitrary and hostile?

The contention that the statute as against it is discriminatory, and deprives it of the equal protection of the law, is based upon the following:

That the oil produced by it in the fields named are assessed at a higher percentage of its valuation than is the oil produced in South Louisiana. That the oil produced by it in the Urania field is assessed at 5.5% of its value; in the Cotton Valley field at from 6½% to 6⅔%; in the Pine Island field at 7.5%, and in the Haynesville field at 6.5%, and that the oil produced in the Southern part of the State is taxed at a uniform rate of 3.4% of its value. That the Act thus taxes its property at a higher rate than other property, places upon it a greater burden than upon others, and is grossly discriminatory and arbitrary.

Plaintiff produces no oil in South Louisiana. Its activities are confined and limited to the production of oil in the Haynesville, Cotton Valley, Urania and Pine Island fields. At the time of the trial upon the merits, plaintiff was not operating in the Urania field. Plaintiff does not charge that the Act in question discriminates between oils of different fields in the Northern part of the State, but that it discriminates between oils produced in North Louisiana and oils produced in South Louisiana.

Plaintiff argues that the oil produced by it in the Urania field is similar, in all respects, to the oil produced in the Vinton field; that the oil from both fields have practically the same base; are used for the same purpose, and are shipped to the same destination. (R., 79). That, notwithstanding this fact, it receives 75c per barrel for its oil, while producers in the Vinton field receives $1.20 per barrel; that its property is taxed at 5.5% of its value, while the Vinton oil is taxed at 3.4%, and that the Act and the tax levied under the said Act discriminates between oils of the same class.

In arriving at the percentage upon which it contends that its property is taxed, complainant entirely overlooks and disregards the cost of transportation.

In Record No. 514, October Term, 1928, page 21, Sec. 2, *Ohio Oil Company v. E. A. Conway, Supervisor of Public Accounts*, the plaintiff's witness, C. D. Keene, testified as follows:

> "In these cases transportation costs constitute a large factor, and, of course, a high cost of transportation necessarily lowers the price that can be paid for the oil at the well."

In view of the charge of discrimination and of the allegation of the difference in prices between oils of the same gravity and the same base, it becomes necessary to ascertain the difference in the cost of transportation for the various fields. And, also, to ascertain the prices paid for the crude oil produced in these fields.

The average price of the Urania oil for the year 1928 was 75c per barrel. (R., 49, 64).

The posted price for the oil of the Vinton field in 1928 was $1.20 per barrel. (R., 63).

These oils were shipped, according to complainant, to the same destination. (R., 24, Tr. 514).

Conceding that the oils were shipped to a common point, namely, Port Arthur, in the State of Texas, it becomes necessary to ascertain the difference in the cost of transportation, for it follows that in posting the prices at

the mouth of the well the purchaser of the oil considers the cost of transportation. (Tr. 514, p. 21, Sec. 2).

In the Vinton field the oil is transported solely by pipe line. (R., 90). The pipe line charge from Vinton to Port Arthur is 15c per barrel of 42 gallons. The gathering charge is 7½c; the total charge per barrel is 22½c. (R., 60).

In the Urania field the oil is transported to Port Arthur in tank cars. (R., 90). The oil must be transported first from the field to the loading racks. While there is no proof in the record as to this particular charge, yet there is in the record the charge made by pipe line companies for this service. This charge, as shown by the tariffs of said companies, is 12½c per barrel. In addition to the gathering charge of 12½c per barrel, there is an additional charge of 2½c per barrel for loading the oil into the tank cars. (R., 61).

The freight rate from the Urania field to Port Arthur is .496c per barrel. (R., 90). When the oil reaches Port Arthur it must be unloaded from the tank cars into the receptacles or tanks of the purchaser, and for this service there is an additional charge of 2½c per barrel.

The total transportation charge per barrel from the Urania field is .671c. The difference between the cost of transporting oil from the Urania field, which is .671c, and the cost of transporting it from Vinton, which is .225c, is 45c per barrel. A purchaser purchasing crude oil could, therefore, pay at the mouth of the well 45c more for the oil produced in the Vinton field than it could pay for the oil

produced in the Urania field. This difference of 45c per barrel in the cost of transportation, added to the price which complainant receives in the Urania field, namely, 75c, would make the Urania oil worth $1.20 per barrel, which is the identical price that complainant alleges the Vinton oil is worth.

The actual production in the Urania field for the year 1928 was 2,497,489 barrels. (R., 52). Its total value, based upon $1.20 per barrel, would be the sum of $2,996,986.80. Under the statute it would be taxed at the rate of 4c per barrel, or the sum of $99,899.56. The rate at which it would be taxed would be 3.33%.

On the 17th day of March, 1927, the price of crude oil in the Urania field was $1.10 per barrel. Grade A Gulf Coast oil was selling at $1.30 per barrel. (R., 62, 63). If we add to the Urania price the difference in the cost of transportation of .45c per barrel, we will have the Urania oil worth $1.55 per barrel as against $1.30 per barrel for Grade A oil.

The testimony of the witness, C. D. Keene, testifying for the plaintiff (R., 79), is:

> "Witness is familiar with Urania oil, having produced there, and having used such oils in his refineries. To his knowledge, it is practically the same as Gulf Coast A oil."

On July 14, 1928, the Urania oil was quoted at $1.00 per barrel, while the Vinton oil was quoted at $1.30 per barrel. (R., pp. 48, 49). If we add the difference in the cost of transportation to the price paid for Urania oil, we

will have that oil worth $1.45 as against $1.30 per barrel for Vinton.

Plaintiff's Exhibit (R., 49) shows the average price of the Urania oil on February 21, 1928, at 75c per barrel. It shows Grade A Gulf Coast at $1.20 per barrel. If we add to the price of the Urania oil the cost of transportation, the price of Urania oil will be $1.20 per barrel, which is the identical price of the Grade A Gulf Coast oil.

Plaintiff's Exhibit (R., 49) shows the average price of the oil in the Urania field for the year 1926, per barrel, was $1.28; for 1927, 94c, and for 1928, 75c. Taking Vinton as Grade A, the price in 1926 was $1.52 per barrel; 1927, $1.30 per barrel; and 1928, $1.20 per barrel.

If we add to the price of Urania oil the difference in the cost of transportation, we have the Urania oil in 1926 worth $1.73 per barrel as against $1.52 for Vinton. In 1927 we have the Urania oil worth $1.39 as against the Vinton oil at $1.30. In 1928 we have the Urania oil worth $1.20 as against $1.20 per barrel for the Vinton oil.

Using respondent's Exhibit (R., 64), we have the Urania price quoted in 1926 at $1.15; Vinton at $1.60 (R., 63). If we add to the Urania price the difference in the cost of transportation, we have the Urania oil worth $1.60 per barrel, which is the identical price for which the Vinton was selling. The same Exhibit shows in 1927 the Urania oil selling for $1.00 per barrel and the Vinton oil for $1.20 per barrel. If we add the difference in the cost of transportation to the Urania oil, the Urania oil would be worth $1.45 as against $1.20.

The production in the Vinton field in 1928 was 1,598,441 barrels. (R., 52). The price on July 1, 1928, was $1.20 per barrel. The Act in controversy was approved on July 7, 1928. The value of the above oil would be $1,918,129.20. Taxed at the rate of 4c per barrel, the tax would be $63,937.64. The rate at which it would be taxed would be 3.33%.

STARKS DOME.

Starks Dome is in the Parish of Calcasieu in South Louisiana. The oil from this field is transported by pipe line. (R., 90). The transportation charge is the same as the Vinton charge. Both fields are in South Louisiana and both are in the Parish of Calcasieu. The average price for the oil in this field for the years 1927 and 1928 was $1.20 per barrel. (R., 63). The difference in transportation between the oil from this field and the Urania field would account for, and does account for, the difference in the price.

The production for 1928 was 185,321 barrels. (R., 53). Its value at $1.20 per barrel was $222,385.20. Under the Act in controversy it would be taxed at 4c per barrel, or the sum of $7,412.84. The rate at which it would be taxed would be 3.33%.

JENNINGS.

In the Jennings field the oil is transported by a short pipe line from the field to a point where it can be loaded into barges, and is barged to Port Arthur, Texas (R., 90). The gathering charge, including the charge for loading, is

.125c. (R., 58). The barge line charge is .165c. (R., 90). The unloading charge after it arrives at Port Arthur would be .025c. The total transportation charge is .315c. The difference between the cost of transporting oil from the Urania field and the Jennings field is 36c per barrel.

From August, 1928, through December, 1928, Urania oil was selling at 85c and 90c per barrel, according to plaintiff's Exhibit. (R., 36). If we add the difference in the cost of transportation to 85c per barrel, we would have the Urania oil worth $1.21 per barrel as against $1.15 per barrel for Jennings oil. (R., 63). If we add 36c to 90c, the price at which the Urania oil was selling, we will have that oil worth $1.26 as against $1.15 for Jennings oil.

The entire production of the Jennings field for the year 1928 was 299,030 barrels. (R., 53). The average price was $1.15 per barrel. (R., 63). Its value was $343,-884.50. Under the statute in controversy it would be taxed at 4c per barrel, or $11,961.20. The rate at which it would be taxed would be 3.4%. Thus we see that the oil produced in the Jennings field would be taxed under the Act at 3.4%, while the oil in the Urania field would be taxed at 3.33%.

EDGERLY.

The production in the Edgerly field in South Louisiana in 1928 was 359,522 barrels. (R., 53). The posted price on July 1, 1928 (R., 63), was $1.20 per barrel. Its value was $431,426.40. Taxed at the rate of 4c per barrel, the tax would amount to $14,380.88. The rate at which it would be taxed would be 3.33%.

In August, September, October, November and December, 1928, Urania oil was selling at 85c and 90c per barrel. (R., 36). The cost of transporting oil from the Edgerly field is .275c. (R., 56). The difference between the cost of transporting oil from the Urania field and the Edgerly field is approximately 40c per barrel. If we add the difference in the cost of transportation to the Urania oil, that oil will be worth $1.25 per barrel as against $1.20 for Edgerly oil. If we add 40c to the 90c for which Urania oil was selling, we have a value of $1.30 per barrel as against $1.20 per barrel for Edgerly.

BELLEVUE.

The production for the year 1928 was 316,343 barrels. (R., 52). Based upon the posted price of $1.25 per barrel, (R., 49, 63) its value would be $395,428.75. Taxed at the rate of 4c per barrel, the tax would be $12,653.72. The rate at which it would be taxed would be 3.2%.

COTTON VALLEY.

This field is in North Louisiana. The price per barrel is posted by the Standard Oil Company and the Gulf Refining Co. *Oil and Gas Journal of date June 13, 1929, p. 141,* (R., between 62, 63). The oil is transported by pipe line (R., 90). The gathering line of the Standard Pipe Line Co. extends from this field to its trunk line at Weller. The main line extends from Weller, in North Louisiana, to Anchorage, in South Louisiana.

The Standard Oil Company delivers the oil to its refinery at Baton Rouge, which is across the Mississippi River from Anchorage.

The pipe line charge from Weller to Anchorage is 30c per barrel; the gathering charge is 12½c per barrel. (R., 62). The cost of transporting the oil from Anchorage across the Mississippi River, to its refinery at Baton Rouge, if any, is not in the record. The pipe line charge by the Gulf Refining Company to Port Arthur, Texas, is 40c per barrel. (R., 55). The gathering charge is 12½c per barrel. There is an additional charge of 2½c per barrel if the oil is delivered to tank cars of the purchaser. (R., 56). The total charge is 55c per barrel.

The Oil and Gas Journal, of date June 13, 1929 (R., 62, 63), shows that oil with a gravity of less than 36° sells at a flat price, and when above 36° sells according to the gravity table. *(See also testimony of C. D. Keene, R., 78).*

During the year 1928, according to its Exhibits A1 and A2 (R., 22, 34, incl.), plaintiff produced in this field 325,393.15 barrels of oil having a gravity less than 36°. This oil, according to its figures, was sold at the following prices and was subject to the following rates of taxation:

BARRELS:	GRAVITY:	PRICE:	TAX:
113,392.77	28° to 31°	75c	4¼c
209,752.55	31° to 31.5°	75c	5c
1,344.56	31° to 32°	75c	5c
903.27	33° to 36°	75c	8c

Plaintiff does not show to whom it sold the oil nor to what point it was shipped. If it were shipped to the Standard Oil Company, the cost of transportation was 42½c per barrel. The value, based upon the prices above named plus the transportation charge, would be $382,-

336.95. The total tax would be $15,446.36. The rate at which it would be taxed would be 4%. If shipped to Port Arthur, the cost of transportation, which is 55c, would be added to the price per barrel which plaintiff received. Based upon this price, the value would be $423,011.10. The total tax $15,446.36. The rate at which it would be taxed would be 3.6%.

Plaintiff also produced 252,414.63 barrels of oil with a gravity of over 36°. The gravity and the prices at which it was sold was as follows:

BARRELS	GRAVITY	PRICE
64.27	40° to 40.9°	$1.56
61.67	39° to 39.9°	1.51
419.18	41° to 41.9°	1.61
661.24	42° to 42.9°	1.66
66,908.60	above 43°	1.76
324.58	44° to 44.9°	1.52
3,006.08	46° to 46.9°	1.58
1,872.69	47° to 47.9°	1.61
7,486.52	48° to 48.9°	1.64
19,036.53	49° to 49.9°	1.67
68,945.26	50° to 50.9°	1.70
44,750.04	51° to 51.9°	1.73
38,877.97	52°	1.76

Based upon the above prices per barrel, plus the cost of transportation to Port Arthur, the value would be $573,929.75. The tax would be $27,753.55. The total value of all of the oil produced by plaintiff in this field in the year 1928 would be $996,940.85. The total tax would be $43,199.91. The rate at which it would be taxed would be 4.3%.

The average gravity of the Cotton Valley field is 29°. (R., 64). The posted price per barrel for oil of gravity under 36°, on June 13, 1928, was 85c. (R., 62, 63). The tax on oil of gravity of 29° is .04¼c per barrel. The total production for the year 1928 was 1,720,046.00 barrels. (R., 52). The value per barrel would be 85c, plus the cost of transportation to Port Arthur, or $1.40 per barrel. The total value would be $2,408,064.40. The total tax $73,-101.95. The rate at which it would be taxed would be 3.03%.

HAYNESVILLE.

In the Haynesville field plaintiff produced, in 1928, 703,157.93 barrels. It sold this oil for prices ranging from $1.16 to $1.28 per barrel. All of the oil was over 28° gravity and was divided, as follows (R., 22, 36):

BARRELS:	GRAVITY:	PRICE:	RATE OF TAX:
80.67	30° to 30.9°	$1.16	.04¼c
168.37	31° to 31.9°	1.11	.05c
879.22	32° to 32.9°	1.16	.08c
74.93	32° to 32.9°	1.20	.08c
7,634.82	33° to 33.9°	1.22	.08c
31,250.19	33° to 33.9°	1.19	.08c
29,592.71	33° to 33.9°	1.21	.08c
60,374.29	34° to 34.9°	1.24	.08c
196,616.86	34° to 34.9°	1.22	.08c
187,509.41	34° to 34.9°	1.26	.08c
34,743.68	35° to 35.9°	1.26	.08c
99,077.28	35° to 35.9°	1.25	.08c
54,725.53	35° to 35.9°	1.31	.08c
429.97	36° to 36.9°	1.28	.10c

The transportation charge from Haynesville to Port Arthur, Texas, is 55c, the same as from Cotton Valley to Port Arthur. (R., 55, 56). The value, based upon the prices above named plus the transportation charge of 55c, would be $1,261,594.73. The total tax would be $56,-253.16. The rate at which it would be taxed would be 4.4%.

The average gravity of the oil in this field is 35° (R., 63), the posted price on July 1, 1928, was $1.25 per barrel. (R., 63). The production for the year of 1928 was 2,175,315 barrels. (R., 52). The total value per barrel, including the transportation charge, would be $1.80 per barrel. The total value would be $3,915,567.00. The tax, at the rate of 8c per barrel, would be $174,025.00. The rate at which it would be taxed would be 4.4%.

PINE ISLAND.

During the year 1928 plaintiff produced in this field, according to its monthly totals (R., 26, 27, 29, 37, 38), 21,974.99 barrels. The gravity of the oil in this field ranged from 29°-29.9° to 41.9°. The oil was transported to Port Arthur by pipe line. (R., 90). The pipe line charge per barrel is 40c; the gathering charge 12½c. There is an additional charge of 2½c per barrel for deliveries to tank cars, making a total charge of 55c per barrel. (R., 55, 56).

Of the above amount, the following quantities were sold at the following prices:

176.43	barrels	@	$1.14	per bbl.
2,646.13	"	@	1.30	" "
691.01	"	@	1.34	" "
1,753.54	"	@	1.37	" "
103.89	"	@	1.36	" "
7,401.78	"	@	1.31	" "
467.54	"	@	1.28	" "
355.26	"	@	1.40	" "
6,377.91	"	@	1.41	" "
704.05	"	@	1.51	" "
477.07	"	@	1.46	" "
354.44	"	@	1.56	" "
465.94	"	@	1.61	" "

The total value, based upon the above prices plus the transportation charge, would be $42,036.67. The total tax would be $2,186.66. This amount is the amount shown by plaintiff's own figures. (R., 25, 28, 34, 35). The rate at which it would be taxed would be 5%.

From the above we see that the fields in North Louisiana are taxed at the following percentage:

Urania	3.33%
Cotton Valley (below 36°)	3.6%
Cotton Valley—average price page 25 of this brief)	3.03%
Haynesville	4.4%
Haynesville average	4.4%
Pine Island	5 %
Bellevue	3.2%

In South Louisiana the fields are taxed at the following percentage:

Vinton	3.3%
Starks Dome	3.33%
Edgerly	3.33%
Jennings	3.4%

We thus see that plaintiffs Urania oil would be taxed and is taxed, under the statute in controversy, at the same rate that the oil of Vinton, Starks Dome and Edgerly is taxed, and is less than the oil at Jennings is taxed.

It will further be seen that plaintiffs Cotton Valley average gravity is taxed at a rate less than the Jennings, Vinton, Edgerly and Starks Dome fields.

The only fields in which plaintiff produces, which are taxed higher than the oil in South Louisiana is taxed, are the Haynesville and Pine Island fields.

The gravities, as shown by plaintiff's own Exhibits, of the Haynesville and Pine Island fields, are higher than the gravities of South Louisiana and are not in the same class fixed by the statute with the oils produced in the South Louisiana fields.

The entire production of plaintiff in the Pine Island field for the year 1928, as shown by its own statements and Exhibits, was 21,974.99 barrels. Of this amount only 176.43 barrels was of a gravity less than 36°. The remainder was above 36°.

Plaintiff produced no oil in the Haynesville field of a less gravity than 30°.

The oil from the Haynesville field, and in the Cotton Valley field above 36°, would be taxed at the same rate that the oil from the Yount-Lee well, in South Louisiana, is taxed. If in the years to come, wells other than the Yount-Lee well are brought in in the South Louisiana field, gravtiy of which will equal the gravity of the oil produced by plaintiff in the North Louisiana field, it will be taxed the same under the statute.

The record and Exhibits show conclusively that all the oil produced by plaintiff which is similar to, or which is in the same class with the oil produced in the South Louisiana field, is taxed at the same rate as is the oil of South Louisiana, and if there is any difference it is that the South Louisiana oil is taxed at a higher rate than is plaintiff's oil.

The law, as we understand it, is that:

> Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous.
>
> *Keeney v. New York, 222 U. S. 536.*

> "The State is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in clear and hostile discriminations between particular persons and classes."
>
> *Citizens Telephone Co. v. Fuller, 229 U. S. 322.*

> "Where the Legislature has classified property, taxes must be uniform on each class of property, but the taxes on different classes are not re-

quired to be uniform for this is the purpose of classification."

Kline v. Jefferson Cy. Board of Tax Supervisors, 18 S. W. (2d. ed. 1012).

So that, even under the uniformity clause, taxes upon different classes are not required to be uniform.

The guaranty of the equal protection of the law, as we understand it, does not prohibit legislation limited either in the objects to which it is directed or by the territory within which it is to operate, but merely requires that all persons similarly situated will be treated alike.

Hart Refineries Co. v. Harmon, 278 U. S. 499;
Toyota v. Hawaii, 226 U. S. 184;
Billings v. Illinois, 188 U. S. 97;
Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232;
Truax v. Corrigan, 257 U. S. 312.

The Federal constitutional guaranty of the equal protection of the law is not a guaranty of an equality of operation or application of State legislation.

Stebbins v. Riley, 268 U. S. 137, 69 L. ed. 884.

If the practical operation of the statute in controversy results in some inequality, which we submit it does not, then we submit that a statute levying a flat rate upon the quantity produced without regard to gravity would result in still greater inequality.

Upon the trial of this case it was shown, and the testimony was not contradicted, that, as originally drawn,

the statute in controversy provided for the levying of a flat rate of 7½c per barrel. That the oil people prevailed upon the Governor of the State to change that provision and to classify the oil, according to gravity, because that would be a fairer and a more just method. Yielding to their persuasive argument, the bill was changed and the oil classified and different rates fixed for the different classifications. (R., 94).

Let us, therefore, see just what inequality such a statute levying a flat rate would produce. We will take, first, the Haynesville field in North Louisiana.

Plaintiff's production in this field, according to its own statement, was 703,157.93 barrels. Based upon the price plus transportation to Port Arthur, Texas, the value of the oil produced by plaintiff in this field for said year would be $1,198,483.46. Taxed at the rate of 7½c per barrel, the tax would have been $52,736.85. The rate at which it would have been taxed would have been 4.4%.

The value of the same quantity in the Vinton field at $1.20 per barrel, plus the cost of transportation to Port Arthur, Texas, would have been $1,019,579.00. Taxed at the rate of 7½c per barrel, the tax would have been $52,-736.85. The rate at which it would have been taxed would be 5.1%.

The same would be true of the Starks Dome field.

The value of the same quantity in the Jennings field, based upon the price of $1.15 per barrel plus the cost of transportation (31.5), would have been $1,030,126.37.

The tax would have been $52,736.85. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Edgerly field, based upon a price of $1.20 per barrel plus the cost of transportation, would have been $1,037,157.95. The tax would have been $52,736.85. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Bellevue field, in North Louisiana, based upon the price of $1.25 per barrel, would have been $878,947.41. The tax would have been $52,736.85. It would have been taxed at the rate of 6%.

The value of the same quantity in the Urania field at 75c, plus transportation of .671c, would be $998,484.26. The tax would be $52,736.85. The rate at which it would have been taxed would have been 5.2%.

Based upon plaintiff's production in the Cotton Valley field, the following would result:

In this field, according to its own Exhibits, plaintiff in 1928 produced 577,807.78 barrels. (R., 32, 34). The value was $997,216.95. Taxed at the rate of 7½c per barrel, the tax would have been $43,335.58. The rate at which it would have been taxed would have been 4.3%.

The value of the same quantity in the Vinton field would have been $837,821.28. Taxed at the rate of 7½c per barrel, the tax would have been $43,335.58. The rate at which it would have been taxed would have been 5.1%.

The same percentage would apply to the Starks Dome field.

The value of the same quantity in the Jennings field would have been $846,488.40. The tax would have been $43,335.58. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Edgerly field would have been $852,266.47. The tax would have been $43,335.58. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Bellevue field would have been $722,259.73. The tax would have been $43,335.58. The rate at which it would have been taxed would have been 6%.

In the Urania field, the value would have been $820,487.05. The tax $43,335.58, and the rate at which it would have been taxed would have been 5.2%.

Thus we see that the oil in South Louisiana would be taxed, under this system, at the rate of 5.1%, while the oil produced by plaintiff in the Haynesville and Cotton Valley fields would have been 4.4% and 4.3%; and the other field in which plaintiff operates, namely, the Urania field, would have been taxed at practically the same rate as the South Louisiana fields, and Bellevue would be taxed at 6%.

So that, if the Legislature had pursued this course, then oil having a greater value would have been taxed at

a lower rate and the oil having a lower value would have been taxed at a higher rate. Therefore, the statute in controversy produces a greater degree of equality than a statute levying a flat rate, without regard to gravity, would have produced.

If the Legislature had levied this flat rate, this case, in our opinion, would still be before this Court, the only difference being that the plaintiffs would be those who produced in South Louisiana and those who produced in the Bellevue and Urania fields, instead of the present plaintiff.

If, under the facts and circumstances presented in this case, this Court can strike with constitutional death the statute in controversy on the ground that it is discriminatory, then does it not reasonably follow that if the tax should be levied upon a flat basis that it also would be held unconstitutional as being discriminatory, because the inequalities produced by its practical operation, as shown herein, would be greater than the inequalities, if any, produced by the statute in controversy; and does it not necessarily follow that, if this should be true, the Legislature could not levy a tax at all upon a quantity basis, notwithstanding the fact that the Constitution of the State specifically authorizes it? Would not the effect of such a decision nullify that provision of the Constitution of the State when it is not attacked in this suit? Would it not follow that because of some minor inequality, if such inequality existed, that a provision of the Constitution of the State providing a tax for the severing of the natural products from the soil, and which has been a part of our taxing sys-

tem for more than twenty years, would be rendered inoperative?

It is well settled that any classification adopted by a State, which has a reasonable basis, will be sustained against an attack based upon the equal protection of the laws clause of the Fourteenth Amendment, and that every state of facts sufficient to sustain such classification, which can be reasonably conceived of as having existed when the law was enacted, will be assumed.

Lindsley v. National Carbon Gas Co., 220 U. S. 62;
Crescent Oil Co. v. Mississippi, 257 U. S. 137;

The presumption is that the Legislature acted with full knowledge of all facts and conditions essential to valid legislation of this kind. The statute in controversy is clothed with that presumption. Two Federal Courts, consisting of three judges each, have twice upheld its constitutionality.

In view of the record here presented, can this Court say that the discretion vested in the Legislature in matters of taxation has been abused and its act arbitrary? Can this Court say that plaintiff, by its proof, has overcome the presumption with which this Act is clothed? From this record, can this Court find that this Act discriminates as against plaintiff in such a way as to offend the provisions of the Fourteenth Amendment?

We submit that the Act in controversy does not produce any inequality in so far as plaintiff is concerned; that if the Court should find that inequality is produced, then

that inequality is of a minor nature and is not greater than, but, on the contrary, less than would result from the levying of a flat rate. That said system provides a more just basis for taxation than would a flat rate; that there is no intentional or systematic discrimination against any class or against any person or corporation; that, on the contrary, the Act operates fairly and justly upon all persons or corporations producing oil of the same class, and this is all that is required by the equal protection clause of the Fourteenth Amendment.

(b-1)

THE CLASSIFICATION OF OIL ACCORDING TO GRAVITY, AND THE LEVYING OF A TAX ACCORDING TO GRAVITY, IS REASONABLE, AND THE METHOD ADOPTED BY THE LEGISLATURE BY ACT 5 OF 1928 IS NEITHER UNREASONABLE NOR ARBITRARY.

If those who are engaged in the business of producing, buying or selling crude oil, buy and sell on a gravity basis, it follows that gravity bears a fair and reasonable relation to the value of the oil.

That crude oil is so bought and sold cannot be seriously questioned. This fact is established by plaintiff's own witnesses.

Mr. R. A. Burdick, plaintiff's cashier, testified that all oil sold or purchased by plaintiff in each of the fields in which it operates was bought and sold on a gravity basis. (R., 76).

It is established by the Oil and Gas Journals offered in evidence by both plaintiff and defendant. It is established by plaintiff's own Exhibits. It is established by the fact that during the year 1927 all of the oil produced in the State was sold according to gravity. This statement is made because in those fields where a flat price was posted it was known to those purchasing oil that the gravity was below 25° and the flat price was therefore posted. If this is questioned, then it cannot be denied that 68% of the entire production for the year 1927 was sold on a gravity basis; that 70% of the entire production for the year 1928 was sold on a gravity basis.

In the year 1927 the entire production of the State of Louisiana was 23,167,239.00 barrels. (R., 50). Of this amount, 5,032,387.00 barrels was produced in South Louisiana and 18,134,852.00 barrels in North Louisiana. (R., 50, 51).

Plaintiff's witness, B. P. Critenden, in suit No. 514 of the October Term 1928 of this Court, at page 59, testified that 64% of the coastal or South Louisiana oil was Grade A, and 36% Grade B. This affidavit was submitted by plaintiff and not by defendant, as shown by the index to the above numbered record. Grade B oil is sold according to the gravity table, as shown by the Extracts from the Oil and Gas Journals appearing in this record. Grade A oil is all oil below 25° gravity, and is sold at a flat price. Grade B oil is all other oil not included in Grade A, and, of course, above 25° gravity.

The oil in the Urania, Bellevue and Hosston fields was sold and is sold at a flat price. (R., 78, testimony of

plaintiff's witness, C. D. Keene). The gravity of the oil produced in these fields is below 25°. (R., 64).

The production of the Hosston field does not appear in this record.

The production of Bellevue and Urania was 4,198,-273 barrels. (R., 51).

The production of the Bellevue and Urania fields, deducted from the entire production in North Louisiana of 18,134,852.00 barrels (R., 51), leaves 13,936,579 barrels which was sold on a gravity basis.

The production of South Louisiana was 5,032,387 barrels; 36% of this amount would be 1,811,659.00 barrels which was sold on a gravity basis.

The total, of both North and South Louisiana sold on a gravity basis, was therefore 15,748,238 barrels.

The total sold on a flat basis was 7,419,001 barrels.

In 1928 the entire production was 22,018,014 barrels. Of this amount, 14,837,136 barrels was produced in North Louisiana and 7,180,878 barrels in South Louisiana. (R., 52).

If we deduct from the North Louisiana production the production of Bellevue and Urania, which was 2,813,832 barrels (R., 52), there would remain 12,023,304 barrels which was sold on a gravity basis.

Of the South Louisiana production, 2,585,115 barrels was sold according to gravity (Grade B) and 4,595,761 barrels at a flat price. The total sold on a gravity basis was 14,608,419 barrels. The total sold at a flat price was 7,409,595 barrels.

The total production in Louisiana for the year 1928 was 22,018,014. (R., 52). Of this amount, 14,837,136 barrels was produced in North Louisiana and 7,180,878 barrels in South Louisiana.

Plaintiff's witness, E. Olivier (R., 83), testified that on June 1st, 1929, that 53.74% of the daily production in South Louisiana was Grade A and 46.26% was Grade B. If this average held true for the year, which we assume it would, then 70% of the oil produced in the State would be sold upon a gravity basis.

The production in North Louisiana was 14,837,136 barrels.

The total production of the Urania and Bellevue fields, of North Louisiana, which was sold at a flat basis, was 2,813,832 barrels. (R., 52).

Deducting the 2,813,832 barrels, the combined production of the Bellevue and Urania fields, would leave 12,023,304 barrels of oil which was sold on a gravity basis in North Louisiana.

46.26% of the production of South Louisiana, which was 7,180,878 barrels, would be 3,321,874.16 barrels classed as Grade B, which was sold on a gravity basis.

The total amount of the entire State, which was sold on a gravity basis, was 15,345,178 barrels.

Taking plaintiff's own figures and its own testimony, 70% of the production of oil in Louisiana for the year 1928, the year in which the Act in controversy became effective, was sold on a gravity basis, thus showing and demonstrating beyond question and beyond doubt that gravity is the controlling and determining factor in arriving at the value of oil in the State of Louisiana.

Conceding, therefore, that gravity is not a factor in making up Grade A oil, which, of course, we do not, it is clear that 68% of the entire production for the year 1927, and 70% of the entire production of 1928, was sold on a gravity basis.

Whatever theories or opinions may be advanced and expressed by the experts adduced by plaintiff, such theories and opinions must yield to that which the facts show actually happened—to what the oil industry, in each day of the year, has actually done—that is, the actual buying and selling of crude oil on a gravity basis.

If, to those who are engaged in the oil industry, gravity bears such a relation to the value of oil so that that industry buys and sells on a gravity basis, then why does it not bear such a relation to crude oil so as to serve as an adequate, just, fair and reasonable basis upon which to base a classification of such oil?

The oil in South Louisiana is divided into Coastal Grade A and Grade B. Grade A oil, which sells at a flat

price, is below 25 degrees gravity. All other oil is Grade B. (R., 87).

Grade B oil is quoted according to gravity. *(See Oil and Gas Journals, R., 62, 63).*

While it is quite true that Grade A oil must contain not more than a certain percentage of sulphur and have a definite viscosity, nevertheless it must be less than 25° Beaume gravity, while Grade B oil is oil of a higher gravity.

The Urania field of North Louisiana is practically the same as Gulf Coast A oil.

The significant line of distinction between Coastal Grade A and Grade B is its gravity.

It appears from the accredited Oil Journals, carrying the posted prices by the various oil companies, that in the oil fields throughout the country the price of oil is posted according to its gravity.

In the Bellevue, Jennings, Vinton, Edgerly, Starks Dome and Urania fields a flat price is fixed. The record shows that the gravity of the oil of each of these fields is below 25°. (R., 48, 64). These gravity tables are in common usage, and gravity has been selected by the oil companies themselves as a basis for the price which they pay for crude oil. It is an undisputed fact that no crude oil is purchased until the gravity is ascertained.

The Mid-Continent field, which is the dominating field of the United States, quotes prices according to gravity.

It is quite easy to say that gravity is not a determinative factor in the Bellevue and Urania fields of North Louisiana, and in the Jennings, Vinton and Edgerly fields of South Louisiana, because a flat price is paid for such oil, but it is difficult to accept it as indifferent when it is ascertained that such fields are practically of the same gravity—that is, the gravity of the oil in these fields is below 25° Beaume. That the gravities of the fields mentioned are below 25° is shown by defendant's Exhibit. (R., 63, 64).

One cannot, by simply giving crude oil an alphabetical denomination, escape the inevitable truth, that is, that gravity enters into the fixing of its character, and its price.

The fact that Gulf Coast Crude "A" is used in the manufacture of lubricating oils does not indicate its lack of those essential elements from which gasoline may be produced, but it is so used because of its adaptability for that purpose. Under the modern process of manufacturing known as "cracking", the heavier elements contained in Gulf Coast Crude "A" may be broken up, in which event it would be used for its gasoline content. (R., 82).

Gravity does bear a reasonable relation to crude oil, and such a classification is neither remote, speculative nor arbitrary.

Plaintiff's witness R. A. Burdick (R., 76) testified that all oil produced by plaintiff in each of the fields in which it operates was bought and sold on a gravity basis.

Plaintiff's witness C. D. Keene (R., 78) testified that gravity is a factor in price changes and values in the Caddo, DeSoto, Red River, Homer, Haynesville and Cotton Valley fields.

When this case was tried on the merits, plaintiff was not operating in the Urania field. (R., 76). The fields in which it was operating were Cotton Valley, Pine Island (which is in the Caddo field), and Haynesville.

The testimony of plaintiff shows, and it is admitted in its brief, that the oil produced by it is oil with a parraffin base and that the oil produced in South Louisiana is oil with an asphalt base. It contends that paraffin base oils are more valuable for their gasoline content, while asphalt base oil is more valuable for lubricating purposes. Other differences are pointed out.

Would not these differences authorize and justify a different classification? Would not such classification have an adequate, just, fair and reasonable basis?

Suppose the Legislature had provided that the tax should be levied upon a quantity basis, but that it should be levied only upon oils having a paraffin base? Had it done so, then the South Louisiana operators and the North Louisiana operators producing asphalt base oils would not have been required to pay any tax, while the producers of paraffin base oil would have been required to pay the tax.

Undoubtedly the Legislature would have had this right insofar as the Fourteenth Amendment is concerned.

Heisler v. Thomas Colliery Co., 260 U. S. 254.

In the cited case the contention was made that anthracite coal and bituminous coal were fuels, and necessarily must be associated in the same class for taxation in disregard, or in diminution of whatever other differences may exist between them in composition, qualities or uses, and that not to so associate them was arbitrary and unreasonable, and, therefore, within the ban of the Constitution of the United States.

This Court, at page 254, said:

> "It would be commonplace and wearisome to enlarge much upon the principle that presides in and determines the classification of objects. It is too necessary and too familiar in the affairs of life. We cannot go far in thought or practice without its exercise. It is the process of considering objects together or in separation as determined by their properties or some of them and the purpose we have in hand. If the purpose and properties have relation the process is logically justified."

The Court further said, at page 255:

> "It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety."

In the above cited case, the producers of anthracite coal, who sold in competition with those who purchased

bituminous coal, paid a tax, while the producers of bituminous coal paid none. The coals were different just as oils having an asphalt base, and oils having a paraffin base, according to plaintiff's witnesses and argument, are different. They differ in chemical composition and physical attributes.

The Legislature of Louisiana, without offending against the Federal Constitution, could have, under the authority of this case, levied this tax upon crude oil having a paraffin base, without levying it upon oil having an asphalt base.

This record shows that plaintiff only produces oil in the Haynesville, Cotton Valley and Pine Island fields, which are in the Caddo field. It shows (R., 78) that in these fields the value and the price of crude oil is determined by gravity.

If the oil produced by plaintiff is bought and sold by gravity, and its value is determined by gravity, what cause has plaintiff to complain? As to it, does not gravity determine the value of its oil? What interest has it to urge and contend that as to the oil produced in South Louisiana gravity bears no relation to the value? It does not produce in South Louisiana and no tax is attempted to be imposed upon it for severing oil in South Louisiana.

If the Legislature could have required the producers of paraffin base oils to pay the tax provided by this Act, and not have required the producers of asphalt base oil to pay any tax whatsoever, and plaintiff could not

have complained of such a tax, what right has it to complain if the tax provided by Act 5 of 1928 imposes upon it, according to its contention, merely a higher tax than is imposed upon those who produce and sever oil of an asphalt base?

If plaintiff could not complain if it were required to pay a tax for severing oil in the Northern part of the State, which it claims is oil with a paraffin base, while the South Louisiana operators would not be required to pay any, what interest has it to complain of a classification which requires it, according to its contention, to pay a higher tax than that paid by the producers of an entirely different class of oil in South Louisiana?

If the classification of paraffin base oils, according to gravity, would be a fair, just and reasonable classification, and such a classification plaintiff admits would be fair, then what right and what interest has plaintiff, who does not now produce asphalt base oil, to question or contest such a classification as being unreasonable and arbitrary? What right or interest has it to contend that gravity bears no relation to asphalt base oil or Grade A oil when it does not produce it? This would be a question to be presented by the operators in South Louisiana who produce asphalt base oils. They are not before the Court so contending, and plaintiff is without authority to champion their rights, if any, they had.

No greater tax is imposed upon complainant than is imposed upon its competitors of the same class.

It has no competitors in South Louisiana because no operator in this section, except those who operate in the Yount-Lee field, produces oil of a like gravity and oil with the same base as that which is produced by plaintiff. The operators in the Yount-Lee field are taxed for the privilege of severing the oil from the soil at the same rate as is plaintiff. This is so because the gravity of the oil is the same as some of the oils of plaintiff, and therefore, being of the same gravity and within the same class, they are taxed at the same rate.

If plaintiff has any competitors who produce and sever crude oil of the same gravity, those competitors pay the same rate whether they sever the oil in South, North, East or West Louisiana.

No section of the State is discriminated against, nor is any discrimination practiced betweeen classes or persons in the same class.

Hart Refineries Co. v. Harmon, 278 U. S. 499.

The system of taxation here attacked has long been a part of the taxing system of Louisiana. This principle was written into the Constitution of the State more than twenty years ago. The Legislature of the State has exercised this right and this privilege for more than eighteen years. It is not a new and suddenly devised scheme of taxation.

(b-2)

THE CLASSIFICATION ADOPTED BY THE STATUTE IS REASONABLE AND FAIR, AND IS NEITHER UNREASONABLE NOR ARBITRARY.

We have heretofore shown in its brief that no discrimination, systematic, intentional or otherwise, is produced by the practical operation of the statute in question.

Not only has plaintiff not shown that the practical operation of the statute results in a hostile discrimination, but, on the contrary, the record shows that oils of the same class are taxed at the same rate.

The record further shows that the result of the operation of the statute is not to produce inequality of taxation nor to produce hostile or arbitrary discrimination. If inequalities result from the operation of such Act, then we submit that such inequalities are not greater than the inequalities which would result from any system of taxation.

We submit further that if such inequality results from the practical operation of this Act, that such inequality is less than would result if a flat tax, without regard to gravity, was levied upon the quantity produced.

We have shown that if a flat tax was levied upon the quantity, without regard to the gravity of the oil, that the higher priced oils would be taxed at a lower rate than the lower valued oil, thus practicing a discrimination in favor of the higher gravity and more valuable oil, and against the lower gravity and less valuable oil.

It is true that the statute in controversy provides for six different classes. It is true that the only oil which the plaintiff produces, which is similar to or in the same class with the oil produced in South Louisiana, is the Urania oil. However, plaintiff no longer produces in this field. (R., 76).

This record demonstrates beyond question and beyond doubt that when the difference in the cost of transportation is taken into consideration, the prices, over a period of three years, of the oils of the Urania field and the Gulf Coast oils are practically the same. They are taxed at the same rate. If there is a difference in the price of said oils it is in favor of and not against the Urania oil.

The oil produced in the Yount-Lee field, which is in South Louisiana, and which is of a higher gravity than the other South Louisiana oils, is taxed at the same rate as the oil which is produced by plaintiff in the fields of North Louisiana of the same gravity.

The record clearly establishes the fact that differences in gravity does reflect differences in value. This is shown by Oil and Gas Journals introduced by both plaintiff and defendant. It is shown by the testimony of plaintiff's witness C. D. Keene (R., 78) and also by the testimony of plaintiff's witness R. A. Burdick, as he testified that all oil bought and sold by his Company in each of the fields in which it operates is bought and sold on a gravity basis.

The Oil and Gas Journals show that for every increase in gravity, whether in South or North Louisiana,

there is an increase in the posted prices for crude oil. If gravity has no relation to the value of oil, then why does the oil industry post the prices according to gravity? If there was some other element more important in determining the value of oil, why did not the oil industry select that element? The fact that it selected gravity, as the basis upon which to quote prices, is conclusive proof, it seems to us, that gravity denotes and determines the value of crude oil.

Plaintiff divides its argument into six sub-headings, and seeks, by a comparison of prices, to show that the rates adopted make the classification and the Act unreasonable.

In the first part of our brief, we have taken up each field in North and South Louisiana and compared the prices, and we have shown, we think, that when the cost of transportation is taken into consideration, there is no difference in the price paid for oil nor in the rates for which oils of the same class are taxed.

Plaintiff, in its brief, states (page 35) that when the average price of Urania crude was $1.00 per barrel, the price of Gulf Coast A was $1.42, and that Urania oil would be taxed 4% and the Coastal oil 2.8%. Reference is made to Record 49, but it will be seen that R., 49 does not show the prices set forth by plaintiff, and evidently this reference is error. If, however, it did show these prices, then we submit that the difference in the cost of transportation, which is shown in this brief to be 45c per

barrel, added to the $1.00 per barrel, would make the Urania oil worth $1.45 per barrel as against $1.42 for Gulf Coast A.

In its attempt to show that the practical operation of this statute results in inequality of taxation, and in its attempt to show that the classification is arbitrary, plaintiff entirely disregards, ignores and overlooks the part that the cost of transportation and the difference in the cost of transportation plays in fixing the prices in the various fields.

The Fourteenth Amendment does not require equality of rate upon the different classes. All that it requires is that the rate be the same for each class, and this the statute in controversy does.

In the case of *Michigan Central R. R. Co. v. Powers, 201 U. S. p. 291*, this Court said:

> " * * * there was a systematic undervaluation of other property in the State which resulted in denying to this plaintiff the equal protection of the law. The trial Court found against this charge. It is enough to say that generally we accept the finding of a trial court upon a question of fact when the testimony respecting it is conflicting. It may also be said that a legislature is not bound to impose the same rate of tax upon one class of property that it does upon another. As it may exempt all of one class, so it may impose a different rate of taxation. It is sufficient if all of the same class are subjected to the same rate and the tax is administered impartially upon them."

POINT II.

ACT 5 OF 1928 IS NOT VOID AS BEING IN CONFLICT WITH SECTION 21 OF ARTICLE X OF THE CONSTITUTION OF LOUISIANA OF 1921.

(a)

The Severance Tax imposed by the statute in controversy is levied according to quantity and in the manner provided by the above numbered Article and section of the State Constitution.

The position of plaintiff is that, since the question of whether the Act in controversy violates the said Constitution has never been presented to the State courts for decision, this question must be decided by this Court as an original question.

In support of this contention, plaintiff cites *Dawson v. Kentucky Distilleries Co., 255 U. S. 288.*

We admit that this Court has held that where it has jurisdiction over a cause by reason of the fact that questions arising under the Constitution of the United States are presented, that it may also pass on all questions of State law which are involved.

United Fuel Gas Co. v. Railroad Commission, 49 Sup. Ct. Rep. 159.

Ritsy v. Chicago R. I. & Pac. Ry Co., 270 U. S. 378.

However, we submit that this Court has also repeatedly held, and has never overruled these decisions so

far as we have been able to ascertain, that unless the case imperatively demands a decision upon whether or not a statute violates the State Constitution, it would be reluctant to adjudge such a statute to be in conflict with the State Constitution before that question has been considered by the State tribunals to which the question properly belongs.

See—*L. & N. Railroad Co. v. Garrett, et als, 231 U. S. 298.*

In the case of *Michigan Central Railroad v. Powers, 201 U. S. 245*, the Court said:

> "The unconstitutionality of a statute may depend upon its conflict with the Constitution of the State or with that of the United States. If conflict with the State Constitution is the sole ground of attack, the Supreme Court of the State is the final authority. The validity of this act has not been directly presented to or determined by the State court, but the first attack by the parties interested is made in the Federal court and by this suit, and conflict with both constitutions is alleged. Undoubtedly a Federal court has the jurisdiction, and when the question is properly presented it may often become its duty to pass upon an alleged conflict between a statute and the State Constitution, even before the question has been considered by the State tribunals. All objections to the validity of the act, whether springing out of the State or of the Federal Constitution, may be presented in a single suit and call for consideration and determination. At the same time the Federal courts will be reluctant to adjudge a State statute to be in conflict with the State Constitution before that question has been considered by the State tribunals. Especially is this true when the statute is one affecting the revenues of the State, and therefore of general public interest."

We, therefore, submit that if this Court reaches the conclusion that the Act in controversy does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, that, under the decisions here cited, it would be the duty of the Court not to pass upon the constitutionality of said Act, in so far as the State Constitution is concerned, since the highest courts of the State, to which this duty properly belongs, has not yet passed upon it.

If, however, this Court should be of the opinion that it is its imperative duty to pass upon the statute in so far as the questions of State law are concerned, then we submit that the Act is not violative of Section 21 of Article X of the Constitution of 1921, but, on the contrary, said Act is consistent with and entirely in harmony with the provisions of the said Article and said section.

We submit that the tax is clearly levied upon the quantity as is specifically authorized by the Constitution. The amount of tax a given operator would pay under the said Act depends upon the quantity that he or it produces. Of course, the rate at which the tax would be computed depends upon the class within which the oil so produced by him or it falls.

The lower Court said:

> "In adopting Act 5 of 1928 providing for definite taxes by the barrel and defining different classes of oil, taxable at different rates per barrel, the Legislature was acting well within the authority granted by the Louisiana Constitution." (R., 68).

(b)

THE CLASSIFICATION BY THE ACT IS FAIR AND REASONABLE, AND IS NEITHER ARBITRARY NOR UNREASONABLE.

This question has been argued heretofore in this brief.

The Act in controversy does not present a case where there has been an intentional overvaluation of the property of an individual or corporation and where the same class of property belonging to another has been undervalued. It does not present a case where plaintiff has been singled out and its property taxed at its value, or overtaxed, while property of a like nature belonging to its competitors is undervalued or undertaxed.

The Legislature of the State of Louisiana has been authorized for more than twenty years to levy the tax in question. It has, at various times, and by different methods attempted to discover and to adopt a method of levying the tax, which would be not only fair to those persons who would be required to pay it, but at the same time would protect the revenues of the State. In seeking to discover such a system and to adopt such a method, it has provided for the levying of the tax both upon the gross market value and upon a quantity basis, as shown by the acts referred to in the statement.

Experience has shown the fault of both systems. It was thought and believed that the method here adopted

was a better method and was one which would be not only fair and just to all persons who would be required to pay the tax, but at the same time would be fair and just to the State and would properly protect its revenues.

> "To be able to find fault with a law is not to demonstrate its invalidity. The problems of government are practical ones and may justify, if they do not require, rough accomodations—illogical it may be, and unscientific."
>
> *Salomon v. State Tax Commission, 49 Sup. Ct. Rep. 195, 73 L. ed., p. 464.*

We submit that if the Act does produce inequality in taxation, such inequality does not render the Act unconstitutional as being violative of either the State or Federal Constitutions.

Nicety of precision and exactitude in taxation is impossible, nor is a rigid formula required. As said by this Court in *Bell's Gap R. R. Co. v. Pennsylvania, supra*, the equal protection laws clause was never "intended to compel the State to adopt an iron rule of equal protection."

We submit further that, if it does produce inequality, the inequalities are less than would result if the Legislature had levied a flat tax without regard to the gravity of the oil.

We submit further that this statute embodies a principle that is generally fair, and that it does equal and exact justice as near as any statute can be expected to do.

We respectfully submit that the judgment of the lower Court is correct and should be affirmed.

Respectfully submitted,

PERCY SAINT,
Attorney General;

W. H. THOMPSON,
Assistant Attorney General.

GEORGE SETH GUION,
Of Counsel.

APPENDIX.

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ACT NO. 140.

House Bill No. 411. By Mr. Dreyfus, Chairman of The Ways and Means Committee, Substitute for House Bill No. 15 by Mr. Schell.

AN ACT

To carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided.

Section 1. Be it enacted by the Legislature of Louisiana, That for the year 1923, and for each subsequent year, taxes as authorized by Section 21 of Article 10 of the Constitution of 1921, are hereby levied upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and

ores; also marble, stone, gravel, sand, shells and other natural deposits.

Such taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance, and become due and exigible quarterly, as herein provided; and they shall operate as a first lien and privilege on such natural resources, which lien and privilege shall follow said natural resources into the hands of third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state.

Section 2. For the purposes of taxation natural resources severed from the soil or water shall be divided into two classes, on which taxes are hereby levied and shall be paid at the following rates:

On oil and gas, three per centum (3%) of the gross market value of the total production thereof:

On all other natural resources, two per centum (2%) of the gross market value of the total production thereof.

For the purposes of this Act said gross market value of each such product or natural resource shall be computed in its unmanufactured state, and as of the time when, and at the place where, it was severed or taken from the soil or water.

Section 3. All such taxes shall be collected quarterly by the respective sheriffs and Ex-Officio Tax Collectors

of the several parishes from which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and in the same manner and at the same time as required by law for other State collections.

When so paid into the State Treasury. two-thirds (⅔) of the severance taxes collected on oil and gas, together with all of the severance taxes collected on all other natural resources severed from the soil or water, shall be credited by the Auditor and Treasurer to a special fund, which is hereby created, to be known as the Severance Tax Fund of the State of Louisiana.

The remaining one-third (⅓) of the severance taxes collected on oil and gas is hereby allocated to the parish from within which such taxes are collected, and shall be credited to such parish by the Auditor and Treasurer, provided such allocation and credit shall not exceed two hundred thousand dollars ($200,000.00) in any parish in any one year. When this limit of two hundred thousand dollars ($200,000.00) shall have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the Severance Tax Fund hereinbefore created.

Section 4. The amounts allocated and credited to each oil and gas producing parish under this Act, shall be apportioned and distributed quarterly among the parish schools, and such district governing authorities as have jurisdiction over the territory from within which such resources are severed and tax collected.

Such apportionment and distribution shall be made within the first fifteen days of each calendar quarter by the Auditor and Treasurer in proportion to the amount of *advalorem* property taxes payable to each such governing authority as shown by the last completed assessment roll, and shall cover all amounts allocated and credited to the parishes during the preceding quarter.

Section 5. Every person, firm, corporation or association of persons severing any natural resources from the soil or water in this State shall, within thirty (30) days after the expiration of each quarter-annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Supervisor of Public Accounts a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, corporation or association of persons during the last preceding quarter-annual period, showing the kind of natural resources so severed or produced, the gross quantity and actual cash value thereof, the names of the owners at the time of severance, the portion owned by each, and such other reasonable and necessary information pertaining thereto as the Supervisor of Public Accounts may require for the proper enforcement of the provisions of this Act. There shall also be shown on such quarterly reports the location of each such natural resource and the place or places where produced or severed from the soil or water.

At the time of rendering such quarter-annual report, each person, firm, corporation or association of persons shall concurrently file a duplicate thereof with the

tax collector of the parish where said natural resource is taken or severed from the soil or water; and shall pay to the said tax collector a tax of 3% on the gross market value of the total amount of oil and gas, and a tax of 2% on the gross market value of the total amount of all other natural resources severed from the soil or water during the preceding three months.

Section 6. Except as otherwise provided in this Act, the making of said reports, and the payment of said taxes, shall be by those actually engaged in the operation of severing, whether it be the owner of the soil, or other person severing from the soil of another, or the owner of any such natural resource severing from the soil of another.

The reporting taxpayer shall collect or withhold out of the value of the products severed, the proportionate parts of the total tax due by the respective owners of such natural resources at the time of severance.

Section 7. Every person, firm, corporation or association of persons actually engaged in severing oil, gas, or other natural resources from the soil or water, or actually operating oil or gas property, or other property from which natural resources are severed, under contracts or agreements requiring payment direct to the owners of any royalty interest, either in money or in kind, is hereby authorized, empowered and required to deduct from any amount due, or from anything due, the amount of the tax herein levied before making such payments.

Section 8. When any person, firm, corporation or association of persons actually engaged in severing oil or gas, or other natural resources from the soil or water, under contracts or agreements requiring payments direct to any owner of the proportionate share of such natural resource, as set out in the preceding section, shall sell such oil or gas, or other natural resource to any person, firm, corporation or association of persons, under contracts or agreements requiring such purchasers to pay all owners of such natural resources direct, then the person, firm, corporation or association of persons actually severing such natural resources from the soil or water, or actually operating such oil or gas property, may not be required to deduct the tax herein levied, but in which event such deduction shall be made by the purchaser before making payments to each owner of such oil, gas or other natural resources; provided that nothing herein shall be construed as releasing the person, firm, corporation or association of persons severing the products from liability for the payment of said taxes.

Section 9. Every person, firm, corporation or association of persons purchasing oil, gas or any other natural resources severed from the soil or water, under contracts or agreements requiring such purchaser to make payment direct to the owners of such oil, gas, or other natural resource, is hereby authorized, empowered and required to deduct from any amount due any owner of such natural resource the amount of the tax levied by the provisions of this Act before making such payments.

All persons, firms, corporations or associations of persons required to deduct from amounts due to others the tax herein levied shall file with the Supervisor of Public Accounts, and with the tax collector of the parish where such natural resource is severed from the soil or water, the reports herein required, and shall at the same time pay to the said tax collector the amount of the tax thus deducted or withheld under the provisions of this Act; provided that nothing herein shall be construed as releasing the person, firm, corporation or association of persons severing the resources from liability for the payment of said taxes.

Section 10. Whenever the title to any natural resources being severed from the soil or water is in dispute, or whenever the purchaser of such natural resources, or any person, firm, corporation or association of persons engaged in severing natural resources from the soil or water, or in the actual operation of oil or gas property, shall be withholding payments on account of litigation, or for any other reason, such purchaser of natural resources severed from the soil or water, or person, firm, corporation or association of persons actually engaged in severing such natural resources from the soil or water, or the actual operation of oil or gas properties, is hereby authorized, empowered and required to deduct from the gross amount thus held the amount of the tax herein levied, and to make remittance thereof to the tax collector of the parish wherein such natural resources are severed, as herein provided.

Section 11. The owners of natural resources severed from the soil or water are hereby made proportionately responsible for the payment of the tax herein levied, and if the tax due on such natural resources severed from the soil or water is not paid by the purchaser thereof, or by the person, firm, corporation or association by the person, firm, corporation or association of persons actually engaged in severing such natural resources from the soil or water, or operating oil or gas properties, then the Supervisor of Public Accounts shall make, in any manner feasible, and cause to be recorded in the mortgage records of the parish where such natural resources are severed from the soil or water, a statement under oath showing the proportionate amount of the tax due by each said owner of the natural resources severed from the soil or water, which statement when filed for record, shall operate as a first lien, privilege and mortgage on all of the property from which the resources were severed and on all of the property of the respective tax debtors, as the case may be, and said property shall be subject to seizure and sale for the payment of the taxes due; provided nothing herein shall be construed as waiving or releasing the privilege on the resources severed wherever found.

Section 12. Whenever the Supervisor of Public Accounts shall cause the statement provided for in the preceding section to be recorded, he shall give notice to the tax debtor by registered letter of the recordation of such statement, and fifteen days thereafter the said Supervisor of Public Accounts shall cause the sheriff and tax collector of the parish wherein such natural resources are severed, to seize and sell, for the payment of such taxes, any property

belonging to the tax debtor, or tax debtors, as provided above, which may be found within the jurisdiction of the said sheriff and tax collector.

Section 13. The sheriff and tax collector of any parish, when requested by the Supervisor of Public Accounts, is hereby required to seize and sell any property, assets and effects belonging to any person, firm, corporation or association of persons owing the tax herein levied on any natural resource severed from the soil or water, after the recordation of the statement required in Section 11, and after the notice required in Section 12 has been given; and all such seizures and sale shall be conducted in the manner and form now required for the sale of similar property for taxes, and penalties shall be imposed and collected as prescribed herein and by general laws.

Section 14. All oil and gas leases, interest in minerals, mineral rights, royalty interests, timber contracts, and rights of any kind to the ownership of any natural resource severed from the soil or water, are hereby declared to be subject to seizure and sale for the payment of the tax herein levied in preference to all other claims, liens and privileges.

Section 15. The tax provided by this Act shall become delinquent after the date fixed for each quarter-annual report to be filed in the office of the Supervisor of Public Accounts, and from such time shall, as a penalty for such delinquency, be subject to a penalty of 2% per month and other penalties provided in the general revenue laws of this State.

The payment of the severance tax levied by this Act shall be in addition to, and shall not affect the liability of the parties so taxed for, the payment of all state, parochial, municipal, district and special taxes levied upon their real estate and other corporeal property; but no further or additional tax or license shall be levied or imposed upon oil or gas leases or rights; nor shall any additional value be added to the assessment of land by reason of the presence of oil or gas therein or their production therefrom. No severance tax or license shall be levied or imposed by any parish or other local subdivision of the State.

Section 16. The Supervisor of Public Accounts shall have the power to require any person, firm, corporation or association of persons engaged in severing natural products from the soil or water to furnish any additional information by him deemed to be necessary for the purpose of computing the amount of said tax; and for said purpose to examine the books, records and files of such person, firm, corporation or association of persons; and, to that end, shall have the power to examine witnesses, and if any such witness shall fail or refuse to appear at the request of the Supervisor of Public Accounts, or refuse access to books, records and files, said Supervisor of Public Accounts shall certify the facts and the name of the witness so failing or refusing to appear, or refusing access to books and papers, to the District Court of the State having jurisdiction of the party; and said Court shall thereupon issue a summons to the said party to appear before the said Supervisor, or his assistant, at a place designated within the jurisdiction of the Court, on a day fixed, to be continued as occasion may require, and give such evidence, and open for inspection

such books and papers as may be required, for the purpose of ascertaining whether or not any return so made is the true and correct return as herein required; and whenever it shall appear to the Supervisor that any such person, firm, corporation or association of persons engaged in severing such natural products from the soil or water has unlawfully made an untrue and incorrect return, as herein provided, said Supervisor shall correct the return and shall compute said tax on same, and certify the same to the tax collector for collection.

Section 17. If any person, firm, corporation or association of persons shall fail to make a report of the gross production and value of its natural products (upon which the severance tax is herein levied) within the time and in the manner prescribed by law for such report, it shall be the duty of the Supervisor of Public Accounts to examine the books, records and files of any such person, firm, corporation or association of persons to ascertain the amount and value of such production and to compute the tax thereon as provided herein, and according to the procedure hereinbefore provided, where witnesses refuse to testify, or access to books and papers is refused, and shall add thereto the cost of such examination, together with any penalties accruing thereon.

Section 18. Any person who shall intentionally make any false oath to any report required by the provisions of this Act shall be deemed guilty of perjury and shall be subject to all penalties prescribed for said crime.

Section 19. It is hereby made the duty of the Supervisor of Public Accounts to supervise and enforce the col-

lection of all taxes that may be due under the provisions of this Act; and, to that end, the said Supervisor is hereby vested with all of the power and authority conferred by this Act.

Section 20. It is hereby made the duty of all purchasers and others dealing in any natural product severed from the soil or water in Louisiana to file quarterly with the said Supervisor of Public Accounts a statement, under oath, showing the names and addresses of all persons, firms, corporations, or associations of persons from whom each said purchaser or dealer has purchased any natural product severed from the soil or water in Louisiana during said quarter; together with the total quantity of, and gross price paid for, each such natural product. Said reports shall be filed within thirty (30) days after the expiration of each quarter, and shall be made on such forms as may be prescribed by said Supervisor of Public Accounts. The failure of any person, firm, corporation or association of persons to make reports as herein provided shall be punished by fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each such offense.

Section 21. Nothing contained in this Act shall be construed as in any wise impairing or depriving the State of Louisiana of any rights and claims whatsoever it may have for the license tax due or to become due under Act 31 of 1920 and other laws, and as herein provided; said rights and claims being hereby specially reserved, whether they be in litigation or not, and all proceedings pending or which may be brought shall be prosecuted as though this Act had not been enacted; provided that said license tax is hereby imposed and shall be collectible in accordance with the pro-

visions of said Act 31 of 1920 up to and until the time herein prescribed for the reports and payments of the severance tax levied and as levied by this Act; it being the true intent and purpose of this Act that said license tax shall be imposed and collected until the time aforesaid; and provided further that all funds thus collected shall be paid into the Severance License Tax Fund as heretofore.

Section 22. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or any part thereof, directly involved in the controversy in which such judgment has been rendered.

Section 23. This Act shall become effective in accordance with all its terms and conditions from and after the 31st day of December, 1922.

Approved by the Governor:
July 14, 1922, 8:40 A. M.

A true copy:
JAMES J. BAILEY,
Secretary of State.

ACT NO. 301 OF 1926.

House Bill No. 86 By Mr. Landry (Iberia)

AN ACT

To amend and re-enact Sections 3 and 4 of Act No. 140 of 1922 entitled "To carry into effect Section 21 of Article X of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided."

SECTION 1. Be it enacted by the Legislature of Louisiana, That Sections 3 and 4 of Act No. 140 of 1922 be amended and re-enacted so as to read as follows:

"SECTION 3. All such taxes shall be collected quarterly by the respective sheriffs and Ex-Officio Tax Collectors of the several parishes from within which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and in the same man-

ner and at the same time as required by law for other State collections.

When so paid into the State Treasury, two-thirds (2/3) of the severance taxes collected on oil and gas, and two-thirds (2/3) of the severance taxes collected on salt and all of the taxes collected on all other natural resources severed from the soil or water, shall be credited by the Auditor and Treasurer to a special fund, which is hereby created, to be known as the Severance Tax Funds of the State of Louisiana.

The remaining one-third (1/3) of the severance taxes collected on oil and gas, and the remaining one-third (1/3 of the severance taxes collected on salt are hereby allocated to the parish from which such taxes are collected, and shall be credited to such parish by the Auditor and Treasurer, provided such allocation and credit shall not exceed two hundred thousand ($200,000.00) dollars in any parish in any one year. When this limit of two hundred thousand ($200,000.00) dollars shall have been reached, there shall be no further allocation and all additional collections for the year shall be credited in full to the Severance Tax Fund herein before created.

SECTION 4. The amounts allocated and created to each oil and gas producing parish, and to all parishes producing other natural resources under this Act, shall be apportioned and distributed quarterly among the parish schools, and such governing authorities as have jurisdiction over the territory from which such resources are severed and tax collected.

Such apportionment and distribution shall be made within the first fifteen days of each calendar quarter by the Auditor and Treasurer in proportion to the amount of *ad valorem* property taxes payable to each such governing authority as shown by the last completed assessment roll, and shall cover all amounts allocated and credited to the parishes during the preceding quarter."

Approved by the Governor: July 16, 1926.

A true copy:

JAMES J. BAILEY,
Secretary of State.

ACT NO. 5.

House Bill No. 89, By Mr. McClanahan.

AN ACT

To amend and re-enact Sections 2 and 5 of Act 140 of 1922, and entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite, and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided," and to amend and re-enact section 3 thereof, as amended and re-enacted by Act No. 301 of 1926.

Section 1. Be it enacted by the Legislature of Louisiana, That Section 2 of Act 140 of 1922, entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest prod-

ucts; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided." be amended and re-enacted so as to read as follows:

Section 2. Taxes on natural resources severed from the soil or water, as levied by Section 1 of this Act, shall be predicated on the quantity severed, and shall be paid at the following rates:

(1) On cypress timber, twenty-six (26) cents per thousand feet, log scale.

(2) On second growth or old field pine timber, seven (7) cents per thousand feet, and on virgin pine timber seventeen (17) cents per thousand feet, log scale.

(3) On ash and hickory timber, twenty-four (24) cents per thousand feet, log scale.

(4) On cottonwood, red gum, magnolia, oak, poplar and sycamore timber, twelve (12) cents per thousand feet, log scale.

(5) On tupelo gum, black gum and sap gum timber, seven (7) cents per thousand feet, log scale, and on all other hardwoods ten (10) cents per thousand feet, log scale.

(6) On turpentine, (crude gum), ten (10) cents per barrel of 400 pounds.

(7) a. On oil of 28° gravity and below, four (4) cents per barrel of 42 gallons.

b. (1) On oil above 28° gravity and not above 31° gravity, four and one-fourth (4¼) cents per barrel of 42 gallons.

b. (2) On oil above 31° gravity and not above 32° gravity, five (5) cents per barrel of 42 gallons.

(c.) On oil above 32° gravity and not above 36° gravity, eight (8) cents per barrel of 42 gallons.

(d.) On oil above 36° gravity and not above 43° gravity, ten (10) cents per barrel of 42 gallons.

(e.) On oil above 43° gravity, eleven (11) cents per barrel of 42 gallons.

(8) On gas, one-fifth (1/5th.) of one cent (1c) per thousand cubic feet, measured at ten ounce (10 oz.) pressure.

(9) On sulphur, fifteen (15) cents per ton of two thousand pounds.

(10) On salt, four (4) cents per ton of two thousand pounds.

(11) On coal, five (5) cents per ton of two thousand pounds.

(12) On lignite, five (5) cents per ton of two thousand pounds.

(13) On ores, five (5) cents per ton of two thousand pounds.

(14) On marble, ten (10) cents per ton of two thousand pounds.

(15) On stone, one and one-half (1½) cents per ton of two thousand pounds.

(16) On gravel, one and one-half (1½) cents per ton of two thousand pounds.

(17) On sand, one (1) cent per ton of two thousand pounds.

(18) On shells, one and one-half (1½) cents per ton of two thousand pounds.

Section 2. That section 3 of Act 140 of 1922, as amended and re-enacted by Act 301 of 1926, be amended and re-enacted so as to read as follows:

"Section 3. All such taxes shall be collected quarterly by the respective Sheriffs and Ex-officio Tax Collectors of the several parishes from within which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and, unless otherwise herein provided, in the same manner and at the same time as required by law for other state collections.

When so paid into the State treasury, all of the severance taxes collected on oil, gas, salt and shells, not otherwise allocated herein, together with all of the severance taxes collected on all other natural resources severed from the soil or water, shall be credited by the auditor and treasurer to a special fund, which is hereby created to be known as the Severance Tax Fund of the State of Louisiana.

One-fifth (1/5th) of the severance taxes collected on oil, gas, shells, timber, sand, and gravel, is hereby allocated to the parish from which such taxes are collected, and shall be credited to such parish by the auditor and treasurer, provided such allocation and credit shall not exceed Two Hundred Thousand ($200,000.00) Dollars in any par-

ish in any one year. When this limit of Two Hundred Thousand ($200,000) Dollars shall have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the Severance Tax Fund hereinbefore created."

That Section 5 of Act 140 of 1922 be amended and re-enacted so as to read as follows:

"Section 5. Every person, firm, corporation or association of persons severing any natural resources from the soil or water in this State shall, within thirty (30) days after the expiration of each quarter-annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Supervisor of Public Accounts a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, corporation or association of persons, during the last preceding quarter-annual period, showing the kind of natural resources and the gross quantity of each so severed or produced, the names of the owners at the time of severance, the portion owned by each, and such other reasonable and necessary information pertaining thereto as the Supervisor of Public Accounts may require for the proper enforcement of the provisions of this Act. There shall also be shown on such quarterly reports the location of each natural resource and the place or places where produced or severed from the soil or water.

At the time of rendering such quarter-annual report to the Supervisor of Public Accounts, each person, firm,

corporation, or association of persons, shall concurrently file a duplicate thereof with the Tax Collector of the Parish where said natural resources were taken or severed from the soil or water; and shall pay to said Tax Collector a tax on the gross quantity of each natural resource severed, computed at the rate applying thereto as named in Section two (2) of this Act."

APPROVED BY THE GOVERNOR: July 7, 1928.

A true copy:

JAMES J. BAILEY,
Secretary of State.

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MAY 8

CHARLES ELMO

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

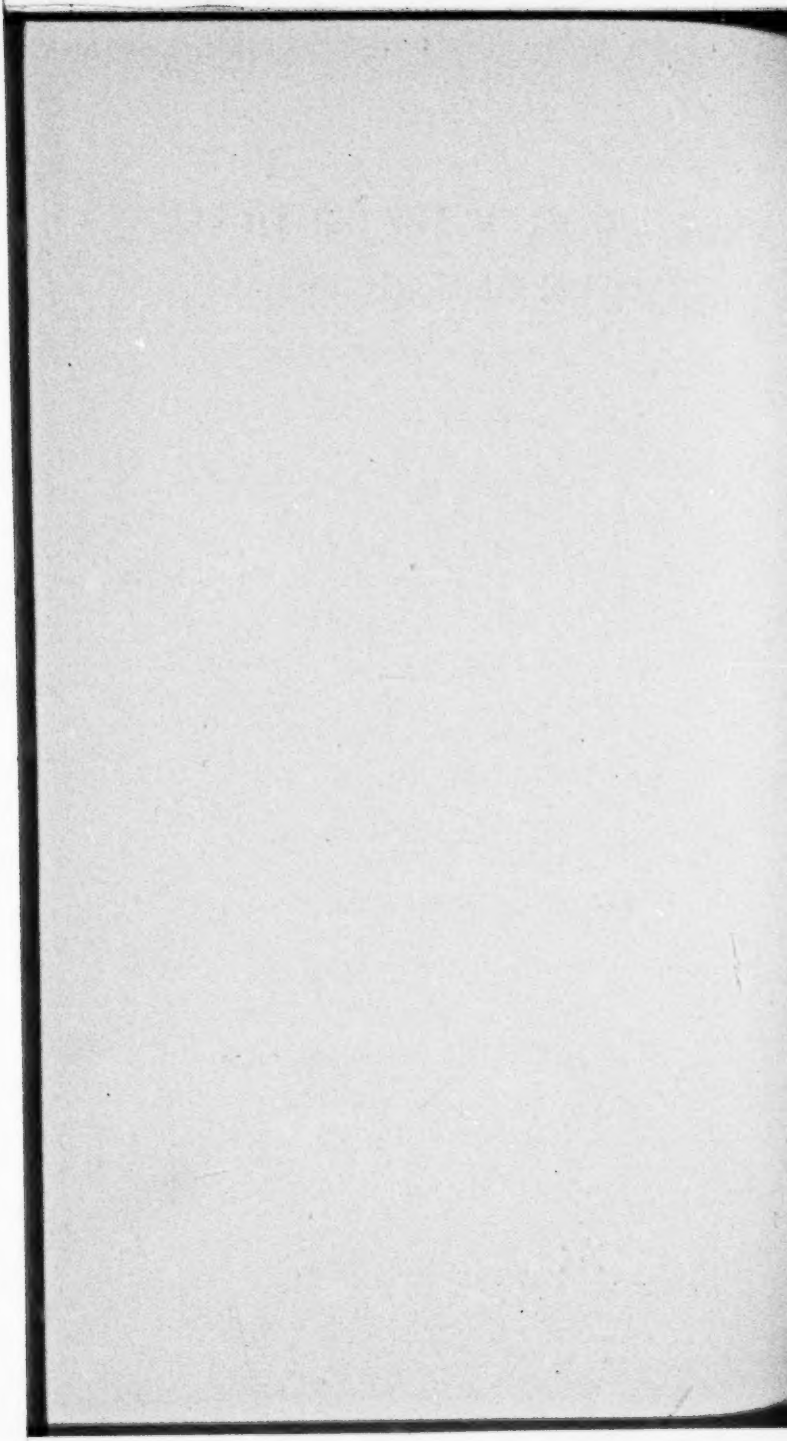
versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA.

PETITION FOR REHEARING.

S. L. HEROLD,
SUMTER COUSIN,
ROY L. BENOIT,
Counsel for Appellant.

MONTGOMERY-ANDREE PRINTING CO. INC., 430-432 CHARTRES, N.O.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA.

PETITION FOR REHEARING.

To the Honorable the Supreme Court of the United States:

In the above styled and numbered cause, comes now The Ohio Oil Company, the appellant, and prays for a rehearing, alleging as grounds therefor error on the part of this Honorable Court in the opinion handed down on April 14, 1930:

1.

In holding that the provisions of Act 5 of 1928 were not violative of the provisions of Section 21 of Article X

of the Constitution of Louisiana, in that the severance tax is levied neither according to value nor to quantity.

2.

In holding that the discrimination effected by the aforesaid act of the Louisiana Legislature is not violative of the equal-protection clause of the Fourteenth Amendment.

In support hereof, petitioner shows:

1.

AS TO THE STATE CONSTITUTION.

It has long since been settled that, where the validity of a State statute under a State Constitution has never been settled by the State courts, and is presented to this Court in a case within its jurisdiction, it will be decided here as an original question.

Dawson v. Kentucky Dist. Co., 255 U. S. 288, 296.

The question here raised has never been presented to the State courts, and therefore appears to call for original decision by this Court.

The State Constitution requires that the tax be levied according to value or quantity. Manifestly it was not levied according to value. It could be said to be according to quantity only if, as held by this Court, "oils of different classes are treated for the purpose of the tax as being in effect different commodities."

Plainly, however, a mere statement by the State Legislature that things which are the same are different does not make them different. A primary purpose of the Fourteenth Amendment is to prohibit just such arbitrary emanations of legislative power. The very essence of the equal-protection clause is the prevention of the use of State power to make by statute differences which do not in fact exist. These constitute what this Court has hitherto uniformly held to be arbitrary classifications.

The statute does not exact different specific taxes on different **kinds** of oil. It does not vary its specific exactions according to content or utility. The "different commodities" are principally oils of the same kind, happening to be of different gravities. The appellant, producing oils of varying gravities in the same fields, pays upon its production specific taxes at varying rates according neither to value nor to quantity, but according to a schedule purporting to be based upon relative weight; or, to put it otherwise, according to gasoline content. But a tax according to weight or to gasoline content is not a tax according to quantity. The only means by which the tax in question may be styled one according to quantity is by the adoption of the conclusion that oils within the several brackets of the schedule are different commodities, and that the tax is according to quantity as respects each such separate commodity.

But it is most respectfully submitted that the Legislature cannot by its decree that all oils produced within

the State constitute six different commodities make six different things out of a product substantially uniform except as to varying gasoline content. Certainly there is nothing in the record to suggest a basis for the treatment as different commodities of the classes of oil arbitrarily created by the statute. The Court's decision would hold that all oils under 28 gravity constitute a particular commodity, regardless of origin, composition or utility; that all oils between 28 and 31 gravity constitute another commodity; and likewise as to all oils between 31 and 32 gravity, all those between 32 and 36, all those between 36 and 43, and, lastly, all those above 43 gravity.

The same legislature which with its fiat divided all the oils in the State into six separate commodities plainly might have made a greater variety of classes, or it might have classified them differently. In either case, the opinion would have held that the classes thus created were each of separate commodities. In such event, the separate things might have been entirely different from the classes here created. The ultimate effect of the decision, therefore, is that it is competent for the Legislature for no reason other than that of mere gravity to say that any oil within the State constitutes a commodity entirely different from oil of any other gravity, and thus to levy variant and discriminatory specific taxes under a constitution limiting the mode of taxation to quantity or value.

It is submitted that this is not consistent with the plain intent of the State Constitution, expressed in terms

clearly requiring the tax to be levied, if not by value, then according to quantity. In this particular case, there is no uniform tax according to quantity, and the decision is correct only if the legislative fiat be taken as final: that oils of the different gravities named in the schedule are thereby rendered different commodities. And the record abundantly shows, as held by this Court, that the same fields may produce oils of different gravities which are in all respects the same.

2.

AS TO THE EQUAL-PROTECTION CLAUSE.

The tax, admittedly highly discriminatory, may be sustained only, as it was sustained, upon the conclusion that the State might impose a form of taxation upon the oils primarily useful for manufacture of gasoline different from that imposed upon other oils whose value is primarily in the manufacture of lubricants. Or, as stated in the opinion:

> "The State might have concluded not to tax the former at all, and in that case there would have been no constitutional ground of complaint because the tax was laid upon the different oils of the Haynesville, Pine Island and Cotton Valley fields."

This is held to be the effect of *Heisler v. Thomas Colliery Co., 260 U. S. 245, 255.*

But, in the case at bar, the point is not that one kind of oil is taxed and the other exempt, nor that a higher tax is laid upon one kind of oil than upon another. The point here is that the Legislature purports to tax all oils

according to a single standard which, admittedly, as held by this Court, is not common to all; in other words, that the incidence of the tax is made to depend upon a factor entirely removed from common control over value or price.

This Court holds that, as to the paraffine-base oils, values are in a rough degree consistent with gravity changes, but that, as to the coastal oils of South Louisiana, suitable for the production of lubricating oil, value "is determined by viscosity and sulphur content, not by gravity."

The Legislature, however, grades the tax upon all oils according to gravity. The measure of taxation, therefore, in the final analysis, is a factor utterly unrelated to one kind of oil, while controlling as to the other.

The burden of taxation, therefore, upon the exercise by the oil operator of the right of severing oil from the soil is governed entirely by a rule which may or may not be applicable to the receipts or profits from his business. The net result is a necessary discrimination, because that which is chosen as a measure of taxation is a fact which is utterly without common relation to the subject of the tax. And, since the admeasurement of the tax is made to rest upon a factor relating to one kind of oil and not to the other, the adoption of that factor is purely arbitrary.

If, through the arbitrary selection of such standard, gross discrimination is effected as against this appellant, it is submitted that it follows, under settled jurisprudence, that it has the right to complain, and that its complaint is justified, because the very effect of the adoption, as a meas-

ure of the burden of taxation as to all oils, of a factor applicable to one only is the prevention of any substantial equality in taxation. If substantial equality is denied by arbitrary action of the Legislature, it seems to follow that the equal protection of the laws has been refused.

For the reasons above assigned, the petitioner respectfully prays that a rehearing be granted, and that, upon further consideration, the judgment of the District Court be reversed.

Respectfully submitted,

S. L. HEROLD,
SUMTER COUSIN,
ROY L. BENOIT,
Counsel for Appellant.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented and filed in good faith and not for delay, and that a copy of the same has this day been served upon opposing counsel by United States mail.

Shreveport, Louisiana, May 6, 1930.

S. L. HEROLD,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 440.—October Term, 1929.

The Ohio Oil Company, Appellant, *vs.* E. A. Conway, Supervisor of Public Accounts of the State of Louisiana.	Appeal from the District Court of the United States for the Eastern District of Louisiana.

[April 14, 1930.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Ohio Oil Company brought this suit in the District Court to enjoin the enforcement of a statute of Louisiana (Act 5 of 1928) imposing a severance tax upon the production of oil. The statute as applied to the complainant was attacked as a violation both of the constitution of Louisiana and of the equal protection clause of the Fourteenth Amendment of the Federal Constitution. It was alleged that the laws of the State afforded no remedy for the recovery of taxes illegally exacted. On appeal from an order denying an interlocutory injunction, this Court decided that the questions presented could not be resolved satisfactorily upon the affidavits submitted, and directed that an injunction should be granted *pendente lite* on stated terms. 279 U. S. 813. Trial was had before the District Court, as specially constituted under the applicable statute, and a decree was entered dismissing the bill. 34 Fed. (2d) 47. The complainant appeals.

In the year 1921, the constitution of Louisiana was amended so as to provide that natural resources severed from the soil or water might be classified for the purpose of taxation and that taxes might be "predicated upon either the quantity or value of the product at the time and place where it is severed" (Const. Art. X, Sec. 21).[1] By Act 140 of 1922, section 2, natural resources were

[1]Section 21 is as follows: "Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Such natural resources may be classified for the purpose of taxation and such taxes predicated upon either the quantity or value of the product at the time and place where it is severed. No severance tax shall be levied by any parish or other local subdivision of the State.

"No further or additional tax or license shall be levied or imposed upon oil or gas leases or rights, nor shall any additional value be added to the assessment of land, by reason of the presence of oil or gas therein or their production therefrom".

divided into two classes, and taxes were levied on oil and gas at three per cent. of the gross market value of the total production, and on all other natural resources at two per cent. of the gross market value. The Supreme Court of Louisiana, sustaining this tax on oil and natural gas, held that it was not a property tax but was an excise tax upon the privilege of severing, although it was measured by the value of the property severed. This decision was affirmed here. *Gulf Refining Company* v. *McFarland,* 154 La. Ann. 251; 264 U. S. 573.

In 1928, the legislature of Louisiana enacted the statute now in question which amended the prior act so as to tax various natural resources on the basis of the quantity severed. Under this amendment taxes on oil were classified according to gravity and ran from four cents a barrel of 42 gallons on oil of 28 degrees gravity and below, to eleven cents a barrel on oil above 43 degrees gravity (Act 5 of 1928).[2]

The business of the complainant in Louisiana is that of producing and selling oil and not of refining it. The production of the complainant is in the following fields: Haynesville, in the parish of Claiborne; Cotton Valley, in the parish of Webster; Pine Island, in the parish of Caddo; Urania, in the parish of La Salle. All these fields are in North Louisiana. The bulk of the complainant's production is in the Haynesville, Cotton Valley and Pine Island fields. Its production in these fields from January to June, 1928, inclusive, amounted to 723,192 barrels out of its total production in Louisiana of 762,139 barrels; and from August, 1928, to March, 1929, inclusive, to 690,397 barrels out of its total production of 705,301 barrels; the remainder was Urania production.

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[2]The text of section 2 of Act 5 of 1928 in relation to oil is as follows: "Taxes on natural resources severed from the soil or water . . . shall be predicated on the quantity severed, and shall be paid at the following rates:

. . . . . .

"(7) a. On oil of 28 gravity and below, four (4) cents per barrel of 42 gallons.

"b. (1) On oil above 28 gravity and not above 31 gravity, four and one-fourth (4¼) cents per barrel of 42 gallons.

"b. (2) On oil above 31 gravity and not above 32 gravity, five (5) cents per barrel of 42 gallons.

"(c.) On oil above 32 gravity and not above 36 gravity, eight (8) cents per barrel of 42 gallons.

"(d) On oil above 36 gravity and not above 43 gravity, ten (10) cents per barrel of 42 gallons.

"(e). On oil above 43 gravity, eleven (11) cents per barrel of 42 gallons".

Gravity as used in the statute, and in oil price quotations, is not specific gravity, but what is called Baumé gravity, under which the lighter the oil the higher the gravity. The record shows that, generally speaking, crude petroleums are divided into three classes —paraffine base, asphalt base, and mixed base, the last being a combination of paraffine and asphalt base. The higher gravity oils usually have a paraffine base, while the lower gravity oils usually have an asphalt base. All three of these classes are found in Louisiana. In North Louisiana there are paraffine base, asphalt base and mixed base crudes, the oils generally having paraffine base, while in South Louisiana the oil produced is mostly asphalt base.

The process of refining oil is distillation. The evidence is that paraffine base oil in that manner yields gasoline, kerosene, gas oil, some lubricating oil and wax. Gasoline comes off first and is the most valuable component of such oil. Asphalt base oil usually yields a very small amount of gasoline by distillation, the first product ordinarily being gas oil, then lubricating oil, and the residuum, asphalt. The gas oil may be subjected to the cracking process and gasoline may be obtained in that way. The value of asphalt base oil is largely for the manufacture of lubricating oil, and the value for this purpose is determined by viscosity and sulphur content, not by gravity. The coastal oils of South Louisiana are divided into "A" and "B" grades, "Grade A" being the oils that are useful in the production of lubricating oil, and the other oils being classed as "Grade B". While gravity is not the determining factor, it appears from the testimony that "Grade A" oils must be less than 25 degrees gravity.

Asphalt base oils are produced in North Louisiana in the fields of Pine Island, Urania, Hosston and Bellevue. The last three named are suitable for making lubricating oil, but the Pine Island heavy oil does not have that value. The evidence is that the Urania, Hosston and Bellevue oils, used for that purpose, are practically the same as the coastal "Grade A" oils.

Gravity is said to be an index of relative value of oils only in the same pool or district, and oils of different gravity are produced in the same fields and from the same tracts of land and sometimes from the same sand. But it appears that, with respect to paraffine base oils, the higher the gravity, the greater is the gasoline content which as between these oils is largely determinative of price. Gravity in such cases is a rough and familiar method of approxi-

mating the gasoline content, and in many fields price quotations of crude oil above 28 degrees are graduated according to gravity.

Crude oil as it comes from the wells is run into tanks from which the purchaser sells to pipe lines, the well-recognized market prices being the prices posted by the pipe line companies buying the oil. The complainant states that the oil produced in its Haynesville field was from 33 to 36 degrees gravity; in its Cotton Valley field, one class was between 28 and 31 degrees gravity and another above 43 degrees gravity; in its Pine Island field, its production was from 37 to 41 degrees gravity. The complainant purchased no crude oil except that, in the Haynesville field, it bought some of the royalty oil of the lessors under its leases. The complainant's cashier testified at the trial that complainant's "purchases and sales in each field in which it operates are made on a gravity basis."

This testimony is not understood to include the Urania field in which the complainant was not operating at the time but had been operating until shortly before. The oil from the Urania field, which was about 20 degrees gravity as well as that of the Bellevue and Hosston fields in North Louisiana, and the "Grade A" coastal oils of South Louisiana, were sold at a flat price and not by gravity. "Grade B" oil, it was testified, was usually sold on a gravity schedule.

In 1928, the production of oil in Louisiana was about 22,000,000 barrels, of which approximately two-thirds was produced in North Louisiana, and of this amount nearly two-thirds was sold on a gravity basis, and the remainder at a flat price. Of the production in South Louisiana, about one-half was sold on a gravity basis.

Price quotations, concededly accurate, for Louisiana crude oils, as well as for Mid-Continent, North and Central Texas, Gulf Coast, and other sections, are shown in the trade journals and were put in evidence. The quotations that are according to gravity have a rising scale of prices as gravity increases.[3]

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[3]Among the price quotations for crude oil produced in Louisiana-Arkansas, set forth in "The Oil Weekly" of May 25, 1928, are the following:

"LOUISIANA-ARKANSAS (All Companies).*

"Homer, Haynesville, Caddo, El Dorado, De Soto and Crichton and Cotton Valley.**

Below 28 gravity	.91
28 to 28.9 gravity	.96
29 to 29.9 gravity	1.01
30 to 30.9 gravity	1.06
31 to 31.9 gravity	1.11

In the case of the oils under 28 degrees gravity that were sold at a flat price, it appears that there was a considerable difference between the price of oils of the North and South Louisiana fields. With respect to oils suitable for making lubricating oil, the evidence is that in February, 1928, the price of the complainant's Urania oil was 75 cents a barrel, while that of the coastal "Grade A" oils was $1.20 a barrel, and the Louisiana tax on each, the gravity being under 28 degrees, was four cents a barrel. The respondent states that the oils of these Louisiana fields are shipped to a common market, Port Arthur, Texas, and, by reason of the greater distance, the transportation charges for the oils of North Louisiana are greater than those from South Louisiana; this fact, the respondent insists, accounts for the difference in the price of the oils at the wells.

The complainant's contention under the constitution of Louisiana is that the tax is invalid because it was not levied according to either quantity or value. It manifestly is a specific tax at a rate per barrel of 42 gallons, and not strictly *ad valorem*. The graduation of the tax according to the gravity of the oil does not make it other than a tax according to quantity, that is, per barrel, as the

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32 to 32.9 gravity	1.16
33 to 33.9 gravity	1.19
34 to 34.9 gravity	1.22
35 to 35.9 gravity	1.25
36 to 36.9 gravity	1.28
37 to 37.9 gravity	1.31
38 to 38.9 gravity	1.34
39 to 39.9 gravity	1.37
40 to 40.9 gravity	1.40
41 to 41.9 gravity	1.43
42 to 42.9 gravity	1.46
43 to 43.9 gravity	1.49
44 to 44.9 gravity	1.52
45 to 45.9 gravity	1.55
46 to 46.9 gravity	1.58
47 to 47.9 gravity	1.61
48 to 48.9 gravity	1.64
49 to 49.9 gravity	1.67
50 to 50.9 gravity	1.70
51 to 51.9 gravity	1.73
52 and above	1.76

*Shreveport-Eldorado's postings stop at above 40 gravity.

**Below 36 gravity, the posting on Cotton Valley is 75 cents. From 36 to 52 and above the regular gravity schedule is followed."

Bellevue	1.25
Jennings	1.15

oils of different classes are treated for the purpose of the tax as being in effect different commodities, each of which has its separate tax. We have not been referred to any decision of the state court upon the point and, until that court pronounces otherwise, we see no reason to hold that the tax is unauthorized by the State.

The further argument is made that the classification of oils is unreasonable and hence is not permitted by the state constitution. This is substantially the same question, from the standpoint of state authority, that is presented as a Federal ground of attack under the Fourteenth Amendment.

The complainant contends that the statute of Louisiana, imposing a tax according to gravity, operates as an arbitrary discrimination; that is discriminates in a wholly unjustifiable manner between the oils of the North Louisiana and South Louisiana fields, and also between the fields producing asphalt base oils. The tax on its production in the Haynesville, Cotton Valley and Pine Island fields is said to be at a rate from about six to seven and one-half per cent. of its value; and on the production in the Urania field, at about five and one-third per cent. of the value; while on the pro-

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Vinton	1.30
Edgerly	1.30
Starks Dome	1.30
Urania	.75
Calion	.75"

Another list of quotations in the same issue of "The Oil Weekly" is as follows:

"GULF COAST

"Grade 'A' all companies	$1.20
Gulf Coast Light Oil, below 25	1.15
25 to 25.9 gravity	1.17
26 to 26.9 gravity	1.19
27 to 27.9 gravity	1.21
28 to 28.9 gravity	1.23
29 to 29.9 gravity	1.25
30 to 30.9 gravity	1.27
31 to 31.9 gravity	1.29
32 to 32.9 gravity	1.31
33 to 33.9 gravity	1.33
34 to 34.9 gravity	1.35
35 to 35.9 gravity	1.37
36 to 36.9 gravity	1.39
37 to 37.9 gravity	1.41
38 to 38.9 gravity	1.43
39 to 39.9 gravity	1.45
40 and above	1.47

*Humble Oil & Refining Company's postings on Gulf Coast Light stop at 35 to 35.9. Its price on all crudes above 35 to $1.37 per barrel. Magnolia Petroleum Company's postings stop at 31 to 31.9."

duction in fields in South Louisiana, and in the Bellevue field, in North Louisiana, the tax is between three and three and one-half per cent. of the value.

The applicable principles are familiar. The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. The States, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the Fourteenth Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are

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The following table is taken from "The Oil and Gas Journal" of June 13, 1929:

"CRUDE OIL GRAVITY TABLE

Gravity—	Okla., Kans. N. C., Tex. 1	No. La. and Arkansas 2	Crane, Upton, Crockett, Winkler, Howard, Pecos, Texas crudes, and Lea, N. Mex. 3	Stephens, Ark. 4	Wheeler (Texas Panhandle) 5	Gray County (Texas Panhandle) 6	Carson and Hutchinson (Texas Panhandle) 7	Salt Creek, Wyo. 8	Grade B & Light Crude (G. Coast) 9	Somerset (South Central Texas) 10
24 and above	....	....	....	....	....	....	....	....	....	....
Below 24	....	....	....	....	....	....	....	....	....	....
Below 25	.85	....	.70	....	....	....	....	....	1.15	....
25 to 25.9	.90	....	.74	....	....	....	....	....	1.18	....
26 to 26.9	.95	....	.78	....	....	....	....	....	1.21	....
27 to 27.9	1.00	....	.82	....	....	....	....	....	1.24	....
Below 28	....	1.00	....	.90	.90	.90	.90	....	....	....
28 to 28.9	1.05	1.05	.86	.94	.90	.90	.90	....	1.27	....
29 to 29.9	1.10	1.10	.90	.98	.90	.95	.90	1.10	1.30	....
30 to 30.9	1.15	1.15	.94	1.02	.95	1.00	.90	1.15	1.33	....
31 to 31.9	1.20	1.20	.98	1.06	1.00	1.05	.90	1.20	1.36	....
32 to 32.9	1.25	1.25	1.02	1.10	1.05	1.10	.95	1.25	1.39	1.05
33 to 33.9	1.30	1.30	1.06	....	1.10	1.15	1.00	1.30	1.42	1.07
34 to 34.9	1.35	1.35	1.10	....	1.15	1.20	1.05	1.35	1.45	1.09
35 to 35.9	1.40	1.40	1.14	....	1.20	1.25	1.10	1.40	1.48	1.11
36 to 36.9	1.45	1.45	1.18	....	1.25	1.30	1.15	1.45	....	1.13
37 to 37.9	1.50	1.50	....	....	1.30	1.35	1.20	1.50	....	1.15
38 to 38.9	1.55	1.55	....	....	1.35	1.40	1.25	....	....	1.17
39 to 39.9	1.60	1.60	....	....	1.40	1.45	1.30	....	....	....
40 to 40.9	1.65	1.65	....	....	1.45	1.50	1.35	....	....	....
41 to 41.9	1.70	1.70	....	....	1.50	1.55	1.40	....	....	....
42 to 42.9	1.75	1.75	....	....	1.55	1.60	1.45	....	....	....
43 to 43.9	1.80	1.80	....	....	1.60	1.65	1.50	....	....	....
44 and above	1.85	1.85	....	....	1.65	1.70	1.55	....	....	.. "

appropriate to schemes of taxation. The State may tax real and personal property in a different manner. It may grant exemptions. The State is not limited to *ad valorem* taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the State is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure. *Bell's Gap Railroad Company* v. *Pennsylvania,* 134 U. S. 232, 237; *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S. 283, 293; *Southwestern Oil Company* v. *Texas,* 217 U. S. 114, 121; *Brown-Forman Company* v. *Kentucky,* 217 U. S. 563, 573; *Sunday Lake Iron Company* v. *Wakefield,* 247 U. S. 350, 353; *Heisler* v. *Thomas Colliery Company,* 260 U. S. 245, 255; *Oliver Iron Mining Company* v. *Lord,* 262 U. S. 172, 179; *Stebbins* v. *Riley,* 268 U. S. 137, 142.

With all this freedom of action, there is a point beyond which the State can not go without violating the equal protection clause. The State may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The State is not at liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike". *Royster Guano Company* v. *Virginia,* 253 U. S. 412, 415; *Louisville Gas Company* v. *Coleman,* 277 U. S. 32, 37; *Air-Way Corporation* v. *Day,* 266 U. S. 71, 85; *Schlesinger* v. *Wisconsin,* 270 U. S. 230, 240.

In the present instance it is apparent that a classification according to gravity cannot be regarded as palpably arbitrary. While the Baumé gravity of oils may vary, even in the same fields, it has been used by the oil industry as indicating in a general way, apparently satisfactory for practical purposes, the gasoline content. In laying a specific severance tax per barrel, the State was not compelled to make an exact determination of the composition of each oil produced. At least with respect to oils sold primarily for the gasoline they contained, it cannot be said that the State attempted a

hostile and unjustifiable discrimination in graduating its tax according to gravity, when the industry itself resorted to the factor of gravity in fixing the scale of prices for such oils. Further, the complainant is in no position to contest the action of the State in adopting a gravity basis with respect to the production of its oils in the Haynesville, Cotton Valley and Pine Island fields, which constituted over ninety per cent. of its entire production, as the complainant itself sold these oils on a gravity basis. If it be granted, as we think it must be, that the State could adjust the severance tax with respect to such oils according to gravity, the question comes simply to that of the particular graduation of the tax. There are, it is true, various gravity schedules of prices, and the same fields may produce oils of different gravities, and oils broadly of the same sort may be sold at flat prices, but, if the State was at liberty to adopt a gravity scale for oils which in such large measure were sold on this basis, the State was not required to grade its tax with a nicety which would assign to every oil produced a grade absolutely corresponding to its actual value. That would mean that the State could tax only on a strictly *ad valorem* basis, a contention wholly inadmissible. In grading a tax, admittedly within its power to levy, the State had a large discretion and there appears to be no ground for holding that there was such an abuse in this instance as to create constitutional invalidity. *Clark* v. *Titusville*, 184 U. S. 329, 331. The graduation of the tax on these oils corresponded generally to the supposed increase of gasoline content, and all oils of the same gravity were treated alike.

The question raised by the complainant has particular bearing upon the discrimination with respect to oils under 28 degrees gravity. The complainant in this respect must stand on its own case. Its oil of this sort is its Urania production, and that oil, as well as that of the Bellevue field in North Louisiana, is said to be "practically the same" as the coastal "Grade A" oils of South Louisiana. According to complainant's own showing, these oils are especially suited to the manufacture of lubricating oil and are dealt in with that in view. While in such cases, gravity is not the criterion, but rather viscosity and sulphur content, these are oils of relatively low gravity, that is, under 28 degrees, and the Louisiana severance tax is a uniform one of four cents a barrel. As these last mentioned oils had a distinct composition and a different utility, the State could impose a

tax upon them which was different from that imposed upon the other oils produced by the complainant and not so well suited for the making of lubricating oil. The State might have concluded not to tax the former at all, and in that case there would have been no constitutional ground of complaint because a tax was laid on the different oils of the Haynesville, Cotton Valley and Pine Island fields. In *Heisler* v. *Thomas Colliery Company, supra,* complaint was made of a statute of Pennsylvania because it levied a tax on anthracite coal and not on bituminous coal. The contention was founded on the fact that both were fuels and that anthracite coal in steam sizes competed with bituminous coal and certain sub-grades of the latter competed with certain sub-grades of anthracite. The Court, accepting the fact of competition, nevertheless sustained the tax, holding that the differences between the two sorts of coal justified the classification. If the State had described the oils especially suitable for the manufacture of lubricating oil with respect to their composition or use, and had taxed them at four cents a barrel, it could not be said that the statute was beyond the power of the State to enact simply because it subjected the complainant to a different tax on its oils of a different character. The statute is not made invalid by reason of a failure to describe the oils scientifically.

The question is thus reduced to the discrimination alleged with respect to the tax on the complainant's Urania production as compared with similar oils. As all these oils bear the same tax of four cents a barrel, the complainant manifestly has no ground for complaint on this score unless it can be found in differences in the prices of these oils. Urania oil was sold at seventy-five cents a barrel, while "Grade A" oil brought $1.20 a barrel. The record affords no explanation of the reason for this wide spread in the price of oils, said to be practically the same and used for the same purpose, unless it be the one advanced by the respondent that the difference is due to the distance of the fields from the common market and the consequent difference in transportation charges. Whether or not this is an adequate explanation, it can not be said that the State, from the standpoint of the Federal Constitution, could not put the same specific severance tax on the same sort of oils used in the same way, merely because particular producers of such oils might obtain different prices. There may be many reasons why one owner obtains more in gross return for

the same sort of commodities than another owner, and still other reasons why the net returns of the one may be more than those of the other. This Court recently decided that a tax imposed by Alabama on those selling cigars and cigarettes, which was based on the "wholesale sales price" was not repugnant to the Fourteenth Amendment because of an alleged difference in the wholesale prices paid by dealers who bought from the manufacturers and by those who did not. *Exchange Drug Company* v. *Long*, decided March 12, 1930. A classification of theatres for license fees according to prices of admission was held to be valid, although some of the theatres charging the higher admission, and paying the higher tax, had the less revenue. *Metropolis Theatre Company* v. *Chicago*, 228 U. S. 61. We find no ground for holding that the tax in this instance violated the Federal Constitution.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.